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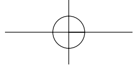

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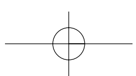

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Acquisition to expand BB&T's accounts

McGriff deal lets bank-owned broker serve larger risks

By SALLY ROBERTS

RALEIGH, N.C.—BB&T Insurance Services Inc.'s acquisition of McGriff, Seibels & Williams Inc. not only would boost the bank-owned agency's presence among larger risk manager clients but also would propel the company up the ranks of the world's largest brokers.

Raleigh, N.C.-based BB&T, which has traditionally targeted middle- and small-market accounts, will pay up to $456 million in cash and stock for Birmingham, Ala.-based McGriff, which specializes in large commercial and energy accounts.

Risk managers will benefit from the deal, observers say, because BB&T plans to build a national platform out of McGriff's existing business, creating another large national brokerage option for buyers.

The deal, which is subject to regulatory and shareholder approval, will likely catapult BB&T into the ranks of the world's 10 largest brokers. Based on 2002 brokerage revenues, the combined entity would have ranked as the world's seventh-largest broker, with $491.5 million in 2002 brokerage revenues, according to *Business Insurance*'s most recent ranking (*BI*, July 21).

It would not, though, make BB&T the first bank-owned broker in the ranks of the world's 10 largest brokers. Chicago-based Acordia Inc., which was purchased by Wells Fargo & Co. in 2000, was the sixth-largest broker in 2002.

BB&T ranked as the eighth-largest broker of U.S. business in 2002, based on brokerage revenues of $354.5 million, while McGriff was No.

See **BB&T**/page 48

Funding relief may imperil wider reform

Controversy swirls on pension proposal

By JERRY GEISEL

WASHINGTON—An escalating controversy over a proposal to exempt some employers from quickly making up pension plan shortfalls is raising fears that the issue could threaten the passage of wider pension funding reforms.

Led by the Pension Benefit Guaranty Corp., opponents of the proposal to waive temporarily rules that require employers with underfunded plans to accelerate plan contributions say its enactment would lead to bigger plan deficits, which ultimately may have to be picked up by taxpayers.

But lawmakers behind the proposal and their supporters say the provision would bring much needed financial relief to employers and encourage them to retain their pension plans.

Others, though, fear that the dispute over the proposal could sidetrack Congress and maybe stymie efforts to enact legislation—involving how pension liabilities are

See **PBGC**/page 48

PHOTO: CORBIS/GALEN ROWELL

Among the assets Certusia has claimed is an investment in pine forest acreage in Fiji.

Unusual reinsurer targets U.S. market

By DOUGLAS McLEOD

WEST PALM BEACH, Fla.—Brand-new billion-dollar reinsurance companies have not been an uncommon sight in the last two years, but "uncommon" is a description that clearly fits one recent market entrant: Certusia Reinsurance Co. Inc.

Certusia, a Nevis-based company that has been offering credit and political risk coverage on the Internet for several months, last week announced that it is expanding into surplus lines and surety underwriting in the United States.

The company, which does not have a financial strength rating, bears little resemblance to any of the large, A-rated insurance and reinsurance groups formed since Sept. 11, 2001, though.

While Certusia reported a net worth of $1.19 billion as of Sept. 30, for example, about half of

See **CERTUSIA**/page 46

Late News

Xerox plan settles suit for $239 million

Xerox Corp. said its pension plan has agreed to pay $239 million to settle pension litigation. A federal court in East St. Louis, Ill., ruled in 2002 that Xerox's cash balance pension plan had to compensate former workers and retirees for underpayment of benefits. The participants charged that the corporation's Retirement Income Guarantee Plan had used an incorrect methodology to calculate lump-sum benefits owed them when they left the company between Jan. 1, 1990 and Dec. 31, 1999.

CNA increases reserves, announces capital boost

CNA Financial Corp.'s third-quarter results included more than $2.0 billion in reserve strengthening and other charges, contributing to a nearly $1.61 billion net loss for the first nine months of 2003, compared with net income of $105 million for the year-earlier period. The insurer also announced a plan to strengthen its capital base, under which Loews Corp., which owns 90% of CNA's shares, would provide up to $1.4 billion in capital support through various mechanisms between now and March 31, 2004.

Health cover rate hikes continue in 2002: CIAB

The cost of providing health coverage is continuing to rise at a double-digit clip for most employers, and many companies are shifting some of those added costs onto employees, a survey reveals. In its latest market survey, the Council of Insurance & Brokers says that half of all small employers and 67% of medium and large companies have experienced health coverage rate increases of 10% to 20% during the past six months. In addition, 30% of small employers and 11% of medium-sized businesses faced

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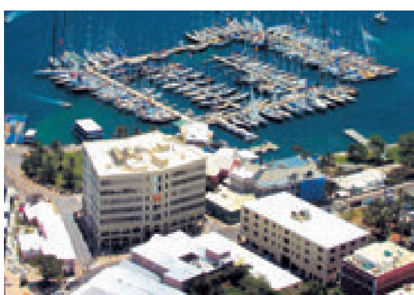

LARGEST POLICYHOLDER-OWNED ALTERNATIVE RISK FACILITIES

Ranking on page 22

LARGEST RENT-A-CAPTIVE FACILITIES

Ranking on page 24

Conferees approve ban on cash balance guidance

By JERRY GEISEL

WASHINGTON—An amendment approved last week by congressional negotiators would prolong the regulatory uncertainty surrounding cash balance plans, but it also could lead to congressional clarification of one issue that has dogged employers introducing the plans.

The amendment, approved by conferees reconciling differences in House- and Senate-passed versions of a Treasury Department appropriations bill, adopts and expands on a Senate-approved amendment by Sen. Tom Harkin, D-Iowa.

Like the original amendment, the revised language would bar the Treasury Department next year from implementing cash balance plan regulations it proposed last December. Those proposed regulations would make clear that the basic design of cash balance plans—giving plan participants pay-related benefit credits and interest on their account balances—does not violate age discrimination law.

The revised amendment also would require the Treasury Department to produce a legislative proposal to provide transition relief for older and longer-service employees when their employers convert traditional defined benefit pension plans to cash balance plans. That proposal would have to be given to lawmakers within 180 days of the appropriation bill's enactment.

The House and Senate are expected to vote on the compromise measure next week.

Conferees' acceptance of the Harkin amendment continues the sharp reversal of fortune for cash balance plans.

Nearly a year ago, employers had reason to believe that the long absence of regulatory guidance on cash balance plans was coming to an end. In December, the Treasury Department proposed regulations that essentially made clear that the plans do not violate federal age discrimination law (*BI*, Dec. 16, 2002).

At the time, Treasury indicated that it hoped to finalize the regulations within a year. In addition, the department said it intended to propose regulations to guide employers on how they should value account balances when employees terminate employment, an issue that has led to much litigation.

But the pendulum began to swing the other way only a few months later, when a federal judge

See **PLANS**/page 47

Backers optimistic Senate will pass bill next year

New push for mental parity

By JERRY GEISEL

WASHINGTON—Congressional sponsors of mental health coverage parity legislation are renewing their effort to get a bill passed.

Longtime parity advocate Sen. Pete Domenici, R-N.M., said this month on the Senate floor that a substitute bill is being developed and that he has assurances from Senate Republicans that the issue will have a high priority next year.

"That means we should be passing mental parity in the first couple of months of the next session," Sen. Domenici said.

While legislators have not acted on his broad parity bill for several sessions, Sen. Domenici said he is not discouraged.

"There is no diminution of interest on my part. I started this many years ago. We did pass it. Now we have to pass it on a full scale, and we will. We have to wait now, for reasons out of our control, but it will get done early next year," he pledged.

'We should be passing mental parity in the first couple of months of the next session.'

Sen. Pete Domenici, R-N.M.

Details on the new proposal were not available last week, but it almost certainly involves scaling back the proposal, S. 432, that Sen. Domenici introduced earlier this year.

That measure would have required employers with more than 50 employees to cover mental health disorders in their group health plans on the same basis as they cover other medical and physical conditions.

That would be a significant change from a 1996 law—scheduled to expire at the end of 2003—which outlaws discriminatory annual and lifetime dollar limits on mental health coverage. The law, though, allows employers to discriminate in other ways, such as imposing higher copayment or coinsurance requirements for mental health treatments than for other health care services.

Employer groups, while willing to discuss any new proposal, are

See **PARITY**/page 46

New York's scaffold laws, designed to protect workers, are contributing to climbing liability rates in the state.

Liability rates spur search for solution

N.Y. explores residual market option

By MEG FLETCHER

ALBANY, N.Y.—Proposals to use a residual market for property insurance to relieve hard market conditions for commercial liability coverage in New York are meeting stiff resistance from insurers in the state.

New York regulators are holding hearings on such a proposal as part of a broad review of market conditions for commercial liability insurance.

Insurers contend that turning to a market of last resort is unnecessary because liability coverage, while expensive, is readily available in the state.

But some contractors, building owners and developers contend they face a coverage "crisis," in part because of New York's so-called "scaffold laws," which greatly expand their exposure to strict liability for workers injured from any elevated position. As a result, they say, premiums are prohibitive and some companies cannot obtain coverage at any price.

Insurance companies and policyholders squared off last week in Albany at the first of four hearings planned by the New York Insurance Department on a proposal to use the New York Property Insurance Underwriting Assn. to also provide liability coverage.

While they disagreed over the need for such an alternative, both insurers and policyholders agree that reforming the liability provisions of the state's scaffold laws—the last of their kind in the nation—would alleviate insurance affordability problems in the state.

"While more costly for many New York businesses, commercial liability insurance is widely available throughout New York State," according to a statement by the Albany-based New York

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Inside Business Insurance

Schools crack down on music downloads

Concerned about the risk of lawsuits, some colleges and universities are taking steps to prevent students from illegally downloading and sharing music files using school computer networks. Page 4

Employers promoting healthier lifestyles

Recognizing the direct and indirect effects of obesity among employees, employers are taking steps to encourage healthy lifestyles. Page 4

New York scaffold laws driving up liability rates

New York employers and workers need to agree to reform state scaffold laws. Page 8

HLF Group loses CEO, plans capital changes

David Margrett has stepped down as chief executive of HLF Group P.L.C., and the London-based broker is planning a reorganization that is designed to allow it to remain independent. Page 41

Cover photos by David Skinner/ The Royal Gazette

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- The **Datebook** calendar lists upcoming industry seminars and meetings and allows you to add info on your own event.
- Searchable **directories** of all the listings of industry vendors found in *BI*'s Market Sourcebook.
- New **Opinion Poll** for readers: Do you think health care cost increases will moderate in 2004?

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REPORTING ON CORPORATE RISK AND EMPLOYEE BENEFIT MANAGEMENT NEWS.

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Employers weigh in on obesity risks

By SALLY ROBERTS

Recognizing the direct and indirect effect that obesity has on their companies' bottom lines, more employers are encouraging healthier lifestyles within the workplace by implementing a variety of weight management and exercise programs for employees.

While weight management programs such as Weight Watchers have been offered at worksites for years, some employers are now expanding on those programs, emphasizing more physical activity and nutrition as well as offering more one-on-one counseling and tailored programs for higher-risk individuals, experts say.

The move toward more employer intervention in weight management is a reflection of a higher recognition of the role obesity plays in other high-cost chronic health conditions, such as diabetes, hypertension, high cholesterol, arthritis and heart disease, they say.

"The idea is if you try to help people manage their health—and weight in particular—on an everyday basis, you're not going to be incurring those larger costs down the road," said Jay Kirschbaum, vp-national director in Willis Group Holdings Ltd.'s legal and research group based in St. Louis.

"We're seeing a lot of employers starting to look not only at weight management programs at the worksite but also looking at their benefit design and making sure that the treatment of obesity is covered," said Stephanie Pronk, a senior consultant with Watson Wyatt Worldwide in Minneapolis. "A lot of that is because of all of the statistics on the increases in obesity in this country and the corresponding increases in health care costs and also the impact on workers productivity and absenteeism," she said.

Indeed, according to the National Institutes of Health, nearly two-thirds of adults in the United States are overweight, and nearly one-third are obese. The NIH defines obesity has having a body mass index—a ratio of weight to height—of 30 or more.

While the NIH puts the total direct and indirect cost of obesity at $64.1 billion and $58.8 billion respectively, a recent study published in Health Affairs journal estimates

See **OBESITY**/page 35

Worksite weight management programs include an emphasis on increased physical activity.

PHOTO: ZUMA

The recording industry blames Internet users who copy music directly from one another's hard drives for declining CD sales.

Schools cracking down on violators

Changing tune on music downloading

By MICHAEL BRADFORD

Illegal sharing of Internet music files has universities worried that if they don't stop the practice by users of their networks, they may end up paying the piper.

Schools are making it clear in a number of ways that they will not tolerate students illegally downloading copyrighted material from the Web. Tough sanctions against students, including the loss of Internet access and possible expulsion, have been put in place at many campuses as a way to stem the tide of illegal downloads, conserve bandwidth capacity and stay clear of lawsuits by organizations that represent recording artists.

The threat of litigation became clearer earlier this year when the Recording Industry Assn. of America began to get tough with individuals who pull music from file-sharing peer-to-peer sites such as KaZaA, Grokster and others. The trade group filed suits against some individuals it claims stole music by downloading it but not paying for it.

Music file-sharing on college campuses is a particular thorn in the RIAA's side.

"Students have more time than money and often have free access to high-speed Internet connections," said a spokesman for the Washington-based group. "We usually characterize colleges as the most significant source of the file-sharing problem."

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ASHRM 2003 Annual Conference & Exhibition

Hospital-sponsored coverage not panacea for med mal risks

By SALLY ROBERTS

NASHVILLE, Tenn.—As prices rise and capacity dries up in the medical malpractice liability insurance marketplace, physicians are turning to hospitals for assistance.

Hospital-sponsored physician malpractice insurance programs help hospitals ensure the continuation of quality health care in their communities by retaining physicians, said Paul A. Greve, senior vp and senior consultant in the health care practice of Willis North America Inc. in Fort Wayne, Ind. However, there are a variety of considerations that hospitals need to address before implementing such a program, he said.

Certain medical specialties have seen dramatically increased premiums or nonrenewals on their medical malpractice coverage, including radiology, emergency medicine, obstetrics, pathology, neonatology and pediatrics, Mr. Greve said.

"These distressed specialties are crucial for the delivery of physician services in our facilities, and yet these same specialties are the ones you need to think long and hard about whether you want to bring them into your facility's insurance program," Mr. Greve told attendees at a session on at the American Society for Healthcare Risk Management annual conference, held earlier this month in Nashville, Tenn.

While hospitals may see a slowing of the "onerous" medical malpractice liability insurance rate increases they've experienced in the last few years, "I don't think the problem is going to go away for doctors, and there's no quick and inexpensive fix to this problem," he said. "Yet, that's what doctors want. They want somebody to come in

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Hawaii Captive Insurance Council Forum

Coordinating vendors is vital

By ROBERTO CENICEROS

POIPU, Hawaii—Troubles can arise when captive insurance company owners fail to properly select and manage the many service providers associated with operating a captive.

Problems can occur because captive parent companies often have core competencies that are "radically different" from those required to operate a captive, said Michael Murphy, president of RiskCap Inc. in Denver.

"So what happens is that the owners bring very little to the equation other than exposure to loss, a business plan and, sometimes, a sophisticated risk management department," Mr. Murphy said. "But even if we have a sophisticated risk management department, we are a long way from duplicating the core competencies necessary to run a specialty niche casualty insurance company."

Therefore, captive owners must turn to "an incredible spectrum" of vendors, including third-party administrators, actuaries, captive managers, accountants, reinsurers, claims managers and others. These distinct vendors also must work together, he said during a panel at the Hawaii Captive Insurance Council's Biennial Forum earlier this month.

One problem that can arise from a failure to coordinate captive vendors is a clash among the diverse information systems employed by the various vendors. Arrangements must be made to properly analyze, assimilate and disseminate data among participants, Mr. Murphy advised.

"If this information highway is not integrated at the very beginning, if it is not thought thorough, if you permit the data mandates of all the service providers to drive dysfunction, what you have is chaos," he said.

To ensure it gets quality work from its service providers, MedAmerica Mutual Risk Retention Group Inc. performs regular reviews of their performance, said Gloria H. Everett, chief executive officer for the Oakland, Calif.-based professional liability insurer.

MedAmerica staff formally evaluate the service providers for their cultural fit, their costs and the integrity of the data they give the RRG. The periodic reviews also eval-

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Continued conference coverage on page 44

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Fiscal woes prompt governments to drop DC match

But few public employers offer matching contributions to plans

By FRED WILLIAMS

Mounting fiscal troubles and budget tightening have led some public defined contribution plan sponsors to reduce or eliminate matching contributions to their plans.

In Los Angeles County, labor negotiations could determine the fate of matching contributions for county plans. In Maryland and South Carolina, employer matches already have been eliminated or suspended. And officials in Colorado have recommended eliminating the match for the state's $827 million 401(k) plan.

That four plans have stopped their matches or are considering doing so is significant because very few public plans have employer matches. That's because government-sponsored defined contribution plans usually complement large defined benefit plans, which carry fairly rich benefits. An informal and unscientific survey among members of the National Assn. of Government Defined Contribution Administrators turned up 20 public plans with matching contribution provisions.

"Matching was largely put in when governments had large (budget) surpluses," said Wendy L. Young, principal with Mercer Investment Consulting in Glen Allen, Va. "It's a valuable tool—even though usually small, it has helped increase participation dramatically. The question now is can they afford to continue. Some private-sector plans are cutting matches, and I'd say it is likely public-sector plans are likely to look at making cuts because of fiscal problems."

Consultants say government agencies with collectively bargained plans in states such as Iowa and Michigan are less likely to experience cuts in matching. "It would be very hard to take back benefits once they are promised in a union environment," said a public pension fund consultant who wished to remain anonymous.

> **'Matching was largely put in when governments had large (budget) surpluses. It's a valuable tool—even though usually small, it has helped increase participation dramatically. The question now is can they afford to continue.'**
>
> *Wendy L. Young*
> *Mercer Investment Consulting*

But the $6.5 billion County of Los Angeles Deferred Compensation Program could face reduction in matching as part of contract talks, a county finance official said. "Negotiations are continuing on whether there will be cuts in employment or reduced matching," the official said.

According to NAGDCA, matching contributions to Los Angeles County's two 401(k) plans and two 457 plans total about $69 million annually—nearly 10% of the county's nearly $800 million shortfall.

The nearly $2 billion Maryland Teachers & State Employees Supplemental Retirement Plans in Baltimore dropped its match in June after gradually cutting it to $100 from $600 when the match was instituted three years ago. The plan includes a 457 deferred compensation plan, a 403(b) tax deferred annuity plan and a 401(k) savings and investment plan.

Sylvia Brown Olivetti, plan trustee and member of the investment committee, said the match was dropped due to mounting state budget and financial pressures. Eliminating the match will save the state about $24 million annually, according to state officials.

The decision to suspend the match "is not seen by anyone as a permanent decision," said John K. Barry, assistant attorney general in the office of the comptroller. "A number of jurisdictions have eliminated or reduced their match in the last year or two....It is my sense that this decision will be reviewed on a year-by-year basis."

The South Carolina Retirement System in Columbia in June suspended its match of up to $300 per year for participants in its $950 million 401(k) plan. Director Peggy G. Boykin said the annual match from state appropriations to the 401(k) plan was suspended after two years because of budget constraints. Officials said the state will save an estimated $17.5 million annually.

For the $23.3 billion Colorado Public Employees' Retirement Assn. in Denver, eliminating the matching contribution to the $729 million 401(k) plan is a pension funding issue, not a budgetary concern. The match has been reduced several times since it was instituted three years ago when the state's defined benefit plan was 105% funded, said a spokeswoman. Fund officials expected a new bill to be introduced in the Legislature to eliminate the match "to help preserve and enhance the funded status of the defined benefit plan," she said.

A 1999 state law allowed PERA to use pension assets beyond the 100% funding level to create a matching contribution to the 401(k) plan. Since then, PERA—like many defined benefit plans—slipped into underfunded status, and the match is a financial drain on the defined benefit plan, the spokeswoman said. A bill that would eliminate the match was approved by the Legislature earlier this year but vetoed by Gov. Bill Owens, who did not approve of language on defining the funded status of the plan.

Fred Williams is a reporter for Pensions & Investments, a sister publication of Business Insurance.

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Paul Winston

Editor Paul Winston's weekly column will return in the November 24 issue

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Editorial

Rebuild scaffolding laws

WITH CONTRACTORS IN New York facing sky-high liability insurance premiums, it's time for construction employers and workers in the state to reach a compromise on its so-called "scaffold laws."

New York Labor Laws 240 and 241, which predate workers compensation laws and several federal and state workplace safety measures, have the admirable goal of protecting workers in a high-risk job. The laws impose strict liability on companies— usually site owners and general contractors—for "elevated" injuries, such as workers falling from a scaffold or ladder. Several other states had similar laws, but New York's statues are the only ones still in force.

Employers and insurers say that the laws impose an unreasonable liability, often on general contractors who have little control over the working practices of subcontractors, and that they have driven up insurance rates to crisis levels. Labor representatives argue that workers in the high-risk construction industry need the protection of the laws to encourage employers to maintain safe worksites. In addition, they say the laws ensure that workers and their families are financially protected above what they consider to be inadequate compensation under workers comp laws.

But workers comp laws provide adequately to workers in other high-risk industries and, since the introduction of the scaffold laws decades ago, workplace safety laws and procedures have improved dramatically.

Furthermore, the huge liability insurance premiums charged to general contractors cannot be in the best interests of the businesses or workers, as they threaten their future employment.

So, a compromise is needed, and bills in the New York Legislature seeking to expand the notion of comparative negligence within the scaffold laws might provide just that. Under the bills, workers would still be able to sue negligent contractors, but contractors would be afforded some degree of protection in cases where they are only partially at fault. If such tort reform is enacted, lower insurance rates should follow.

Cash balance move a defeat

WE DIDN'T KNOW whether to laugh or cry when we read the comments of federal lawmakers crowing about their latest "victory" on cash balance pension plans.

That victory, as Rep. George Miller, D-Calif., terms it, involves an amendment adopted by congressional conferees last week that would bar the Treasury Department from implementing regulations designed to clarify that most cash balance plans are not age discriminatory. The regulations, which were proposed last year, would remain in limbo, leaving employers unfairly exposed to age-bias claims.

Rep. Miller said of the conferees' action: "Now, on behalf of these employees, we have won. We have defeated the president's plan to cut millions of older workers' pensions in half."

To that, we say nonsense. As Rep. Miller surely must know, the Treasury Department regulations would not cut benefits by even a penny. Pension law is clear that once a benefit is earned it cannot be taken away.

Regrettably, Rep. Miller is far from the only congressman spewing misleading sound bites on the issue. Sen. Tom Harkin, D-Iowa, the sponsor of the amendment the conferees approved, said: "If companies are allowed to break promises of benefits and retirement security to its long-standing employees, what kind of signal does that send to American workers?"

Once again, while one may debate how employees are affected when an employer converts an existing pension plan to a cash balance plan, no legal benefit entitlement promises are broken.

The conferees' action could, in fact, become the opposite of a victory for pension plan participants. Employers—disgusted with what appears to be no end to the current regulatory uncertainty and congressional attacks on cash balance plans—could become fed up and walk away from a defined benefit plan system altogether. One could hardly blame them.

We hope that legislators realize what is at stake and begin to work with federal regulators on rules that would enable the plans to operate free from the specter of age-bias violations, while ensuring that millions of workers continue to enjoy the benefit security that only cash balance and other defined benefit plans can provide.

Schillerstrom

Letters to the Editor

Much to consider in NAIC review of RRGs

To the editor: Reading your Oct. 6 editorial, "Give RRGs a Fair Review," I do hope the National Assn. of Insurance Commissioners reviews the facts with an open mind. This experiment has gone on long enough without a fair and unbiased examination of the facts. I have not seen a copy of the draft resolution opposing the expansion of the Risk Retention Act, but I am pleased to hear that it cites the recent insolvency of the national Warranty Insurance Risk Retention Group. Far from being incidental to the discussion of the future of the Risk Retention Act, I believe a thorough examination of this event will provide very important insights into the operation of RRGs.

This group not only "had operations in Nebraska and sold automobile warranties," as stated in your editorial, but also "backed an estimated 900,000 to 1 million service contracts over the past decade," according to a Sept. 23 article in the Wall Street Journal. The WSJ also reported that "car buyers paid from $600 to $2,000 for the coverage," and that an "estimated 8.7 million such contracts are sold a year, putting the market for them in excess of $10 billion, according to Universal Underwriters Group, a competitor to National Warranty."

This raises a few pertinent questions. According to the Risk Retention Group Directory & Guide, 2003, National Warranty Insurance Risk Retention Group is "owned by its members, who consist of approximately 500 manufacturers, distributors and dealers of automobiles, trucks and van-related parts and products throughout the United States." Its states of operation are given as "50 states and D.C."

I thought that risk retention groups were captive insurance companies that may sell insurance only to their own members and that do not compete in the marketplace with commercial insurers. I understood that it was for this reason that RRGs are given broad powers not available to commercial insurance companies. It is hard to imagine how 500 members could purchase 1 million service contracts, even over two decades, unless the coverage was somehow sold to the public. How would a risk retention group come to be a "competitor" in a $10 billion market?

How can a risk retention group be domiciled in the Cayman Islands (according to the Risk Retention Group Directory & Guide, 2003) when the literature on RRGs would tend to convince a reader that they must be chartered in one of 50 states, which would also be solely responsible for their regulation?

I do hope that RRGs get a fair review by regulators, by the public and by all those in the insurance and risk management business. I would hope that such a fair review would include meaningful informa-

See LETTERS/page 40

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PHOTO: DAVID SKINNER/THE ROYAL GAZETTE

W. Alexander Scott earlier this year replaced Jennifer Smith as premier of Bermuda. Mr. Scott said that little will change in the close relationship between the insurance industry and the government.

Premier: Maintaining even keel

Continued from page 10

around $125 million in losses for local insurers.

The premier looked back on his first few months in office and talked about the importance of the Bermuda insurance market in a discussion earlier this month.

Bermuda's insurance industry "is of vital importance to us," Mr. Scott said. Until recently, he noted, insurance and tourism were considered equally important to the island's economic well-being. "Now, insurance and reinsurance have taken the lead role. We will always keep a high emphasis on tourism, but we've done very well in the insurance business. It provides about 3,000 jobs, about 7% of our workforce."

The Bermuda government's dealings with the insurance market have long been regarded as open and civil, and that is not likely to change, according to Mr. Scott.

"It would be fair to say that we have a close working relationship," he said. "There is a dialogue continuously with the industry. It is an established relationship that goes back over a period of time."

The only change he could foresee, Mr. Scott said, is that "we will work to strengthen the relationship."

He explained that the local government, "through the Ministry of Finance, keeps a high level of oversight" in a domicile that has long been recognized as one where regulations are strong enough to keep weaker players out but flexible enough to allow insurers and others some breathing room to operate their businesses.

The regulatory scheme is working well, according to Mr. Scott, and no significant changes are needed. "We keep our regulatory requirements continually under review," he said. "It's steady as she goes right now."

As for the recent debate over work permits, Mr. Scott downplayed the impact it would have on the insurance community. Insurers have expressed concern about what they perceive as the government's intention to more strictly enforce the terms for work permits.

'It would be fair to say that (Bermuda's government and the insurance industry) have a close working relationship. There is a dialogue continuously with the industry.'

W. Alexander Scott
Bermuda Premier

"I don't regard it as as much of a controversy as something that needs clarification," he said. The extension of work permits will continue to be considered "on a case-by-case basis," the premier said. "Key members can be here for six years, and that can be reviewed for nine years." And an extension beyond that is possible in some cases, he pointed out.

Mr. Scott said that "the first item of business" when he took office was to "give assurance to the corporate community that I would continue a direct dialogue with industry. The insurance community and international business community are satisfied that we can work through any differences."

Even so, he is aware of the talk that some insurers might leave the island if the work permit issue is not resolved to their liking.

"If two leave, three will come," the premier said. "I don't mean to sound cavalier or patronizing, but there may be a given company, for whatever reason, that may choose to leave." He said if companies do decide to leave, it probably would not be solely because of the debate over limits on work permits.

The limits are in place to give Bermudians a chance to fill jobs for which they are qualified. Mr. Scott said. Bermudians have successfully moved into management and other positions at international companies, and he explained that a government agency keeps tabs on those who are qualified and can match them with job opportunities.

See PREMIER/page 14

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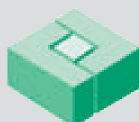

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Premier: New leader following course set by predecessors

Continued from page 12

"If and when there is a qualified Bermudian, it is made known to the Ministry of Immigration," he explained. When a foreign worker's contract expires, it can be renewed if the ministry does not have a qualified Bermudian to fill the post, Mr. Scott noted.

Asked whether the island can handle further physical expansion of the marketplace, given the current lack of office space, the premier acknowledged that "we certainly are mindful of sustainable development." Some of the demand for office space has eased slightly, he noted, after United States military bases vacated facilities they were using at "both ends of the island," Mr. Scott pointed out. Those buildings are being converted to offices, and light industries such as communications and e-commerce businesses are choosing to locate there rather than in Hamilton.

As for Bermuda's ability to continue attracting insurers, captive insurance companies and other insurance-related businesses, Mr. Scott said that the island, if not the leading domicile, "is certainly up there with the leaders."

Bermuda's "critical mass" of financial services means it's easy for companies to locate on the island and tap into its support infrastructure, Mr. Scott said. "We have a heavy concentration of expertise and service providers," he said. "It's a good place to do business, because others do business here."

Permits: Effects on business pondered

Continued from page 10

from the difficulty of recruiting persons because there is a general, chronic shortage of resources overseas.

• Without the continued presence of the individual, the business would be seriously injured to its own detriment and to that of the interests of Bermuda and Bermudians.

According to David Ezekiel, head of the Assn. of Bermuda International Cos., the way this stipulation is interpreted will be crucial to the potential effect the policy will have on businesses operating on the island.

"It all rests on what one considers to be a 'key person,'" Mr. Ezekiel said. "For instance, you could have a midlevel chartered accountant working in a company in Bermuda, and that is a category where finding staff in Bermuda that are Bermudian is difficult."

"And the expectation of international business from 2001 until recently is that that sort of category would be considered a key category," Mr. Ezekiel said.

While Bermuda Premier W. Alexander Scott, installed in July, has downplayed the impact work permits would have on the insurance community (see story, page 10), the question of how the policy will be interpreted by the new government has come to the fore, sources say.

'It all rests on what one considers to be a "key person." ... For instance, you could have a midlevel chartered accountant working in a company in Bermuda, and that is a category where finding staff in Bermuda that are Bermudian is difficult.'

David Ezekiel
Assn. of Bermuda International Cos.

"We are in the middle of discussions now with (Mr. Horton) as to whether that interpretation has changed. And certain recent pronouncements that were very specific to the topic made it appear that they had changed," said Mr. Ezekiel. "On the other hand, government has basically said that they won't do anything that would encourage any company to leave the island. So the right answer is somewhere in between those two. That is really the nub of the question—how inflexible is the interpretation going to be?"

Many insurers operating in Bermuda are confident that good relations between the insurance industry and the government will mean that the policy doesn't have a far-reaching effect on the island's workforce and the insurance industry's ability to attract staff.

The government has always said that it recognizes that key employees are a vital part of companies operating in Bermuda, according to Jim Bryce, president and CEO of IPC Re in Hamilton, Bermuda. "Business and government has worked so well here in Bermuda for the past two decades," he said.

The influx of capital into Bermuda from international insurance companies since as early as the 1960s has strengthened the island's economy and provided lots of jobs

See PERMITS/page 16

WHAT DRIVES US?
OUR COMMITMENT TO OUR BUSINESS PARTNERS.

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Permits: Policy's effect pondered

PHOTO: DAVID SKINNER/ THE ROYAL GAZETTE

The Bermuda government has downplayed the effect the nation's work permit laws will have on the insurance industry.

Continued from page 14

for native Bermudians, he said. This means that the government is unlikely to do anything to jeopardize relations with the insurance industry, he noted.

And another insurance company representative, who asked not to be named, said he believed that most companies have good relationships with the immigration department and that the new policy would not cause them too many staffing problems.

But if the policy is stringently enforced, it could have a damaging effect on international business in Bermuda, according to Mr. Ezekiel.

"You are not going to be able to attract talent if they think that from the minute they start they have got a sunset on their tenure with the company," he said.

"And the danger is that people won't wait it out even until the end, especially people in their 30s and early 40s who are defining their career are going to look way ahead and aren't going to invest a whole lot of time in a company where, at some stage, they are suddenly going to be required to go."

Some sources expressed concern that international businesses might relocate as a response to the policy.

"There is no doubt that companies who need to attract talented management and keep them are not going to play on a field where their senior managers are suddenly asked to go," said Mr. Ezekiel.

And Fiona Dunn, international insurance representative for the Industrial Development Agency of Ireland, said that, while she could not name individual companies, there had been interest from Bermuda-based companies in setting up in Dublin.

But Mr. Ezekiel said that he was optimistic that Mr. Horton was sympathetic to the needs of international business and was prepared to listen to companies' concern.

ABIC has a meeting scheduled later this month with the minister, he noted.

While the new rules would not begin to affect companies until 2007 at the earliest, the issue needs to be discussed now, because companies will have to make decisions about their strategy soon, according to Mr. Ezekiel.

"It is not as if we have another three years to sort it out, because we don't. If people feel that, come that time, this is going to be the policy, they will make the decision to stay or not right now," he said. "So it is crucial and absolutely essential that businesses are allowed to retain their intellectual capital."

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PHOTO: PIERANGELO LANSRANCHI.

A group of South Shore eateries called the Lido complex was one of the seaside victims of storm surge from Hurricane Fabian.

Hurricane: Light damage seen

Continued from page 10

cated their nervousness to insurers as to potential damage from a Category 3 storm, said Glenn Titterton, president and chief executive officer of Bermuda-based insurer BF&M Ltd. "The result was, obviously, a lot of damage. But, having said that, the day following the hurricane, the island was open for business and functioning."

Among the structures worst damaged was the Castle Harbour Causeway, which links the airport to other parts of Bermuda. The span was reduced to a single lane of traffic for weeks until crews could finish repairs.

A few hotels and waterfront homes sustained major damage as well. Homeowners, for the most part, escaped with missing roof tiles and broken windows, although some houses were heavily damaged.

"I saw widespread damage to roof slates," said Mr. Khanduri. "Other than that, not too many walls had fallen down."

Fabian's damage served to teach Bermudians some lessons as to how to do an even better job of hurricane preparedness.

"You always learn from these affairs," said Bermuda Premier W. Alexander Scott.

Because lives were lost on the causeway, "we will never again allow any type of traffic on the causeway when there is a significant storm," the premier vowed.

And because thousands of residents and businesses lost power when lines were toppled, "there is a call for most power lines to be underground," said Mr. Scott. "It may mean that, over time, we encourage future development to put the lines underground."

Downtown Hamilton, where electrical lines are buried, never lost power during the storm. That allowed businesses in the capital city to be up and running soon after the storm passed.

"The biggest lesson is the issue of storm surge," said Mr. Titterton. Much of the damage to waterfront homes and resorts was caused by the water that was forced into the buildings. "An awful lot of people are wondering whether we are prudent to build in these areas," he said of construction near beaches.

'I saw widespread damage to roof slates. ... Other than that, not too many walls had fallen down.'

Atu Khanduri
AIR Worldwide Corp.

Mr. Osborne said that "damage would have been remarkably small" from the hurricane "if it hadn't been for the homes and properties on the seaside."

The group of South Shore eateries called the Lido complex, which is part of the MEF Group of Cos., was one of the seaside victims of storm surge. The cafe and restaurant properties will be shored up before next year's hurricane season.

Mickey's Bistro, an outdoor cafe at the site, all but "disappeared," said Teresa Chatfield, finance director for MEF Group. And storm surge that rushed ashore pushed cabanas located underneath another restaurant up into the structure, causing portions of the restaurant to collapse.

Frank Stocek, general manager at Elbow Beach Hotel, which is located at the Lido site, said the restaurant would be rebuilt with steel-reinforced concrete. The kitchen and bar, not originally built to withstand hurricane conditions, will be constructed in a bunker style, he said. "It will all be built to meet today's code and will be much stronger."

The hotel suffered damage but was back in operation soon after the hurricane.

The island's building code is part of the reason it weathered the storm so well, according to Mr. Khanduri.

While codes in the United States address wood frame construction, the Bermuda code that requires reinforced concrete means buildings

See HURRICANE/page 26

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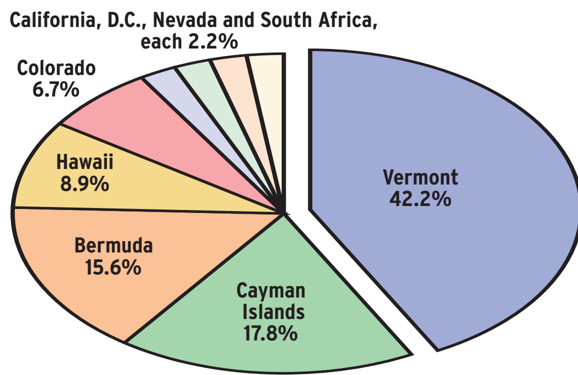
ONSHORE AND OFFSHORE

Policyholder-owned facilities by domicile



Source: *BI* survey

LARGEST FACILITY MANAGERS

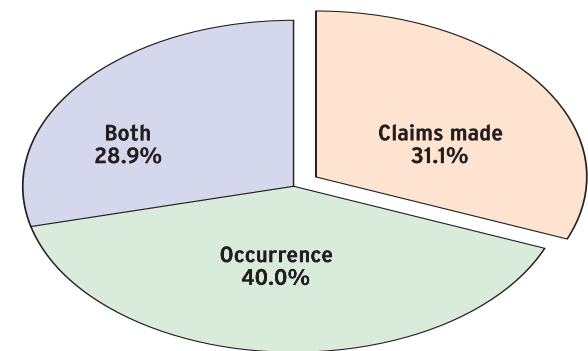
Ranked by number of policyholder-owned facilities

Management Company	Facilities
RiskCap	17
Marsh-Captive Management Services	10
USA Risk Group of Vermont Inc.	6
Alliance Member Services	2
Atlantic Security Ltd.	2
OIL Management Services Ltd.	2

Source: *BI* survey

LIABILITY TRIGGERS

Coverage forms used by policyholder-owned facilities



Source: *BI* survey

Largest policyholder-owned alternative risk facilities

Ranked by 2002 gross premiums written

Rank	Company	Domicile	2002 gross premiums written	2002 participants	Business conducted by participants	Risks insured	Management company/ Address	Telephone/Fax/ Web site	Contact
1	Associated Electric & Gas Insurance Services Ltd.	Bermuda	$866,754,000	485	Utility and energy industries	D&O, employment practices, excess liability, fiduciary liability, financial products, professional liability, property, workers compensation	AEGIS Insurance Services Inc. 10 Exchange Place, Jersey City, N.J. 07302	201-521-1200 Fax: 201-521-9555 *www.aegislink.com*	Gilbert Gould, senior vp
2	Oil Insurance Ltd.	Bermuda	$166,379,000	79	Chemicals and mining, oil and gas exploration and production, petrochemicals, utilities	Catastrophe property damage, third-party pollution liability, well control	Oil Management Services Ltd. 30 Woodbourne Ave., Pembroke, HM 08, Bermuda	441-295-0905 Fax: 441-295-0351 *www.oil.bm*	Elspeth Brewin, vp
3	American Contractors Insurance Group	Bermuda	$70,765,000	35	Construction contractors	Automobile liability, general liability, workers compensation	ACIG Insurance Co. 12222 Merit Drive, Suite 1660, Dallas, Texas 75251	972-702-9004 Fax: 972-687-0603 *www.acig.com*	William S. McIntyre, chairman
4	Nonprofits' Insurance Alliance of California	California	$31,000,000	3,632	Tax-exempt nonprofit organizations	Auto liability, D&O, general liability, improper sexual conduct, physical damage, social service professional liability	Alliance Member Services P.O. Box 8507, Santa Cruz, Calif. 95061	800-359-6422 Fax: 831-459-0853 *www.niac.org*	Susan Bradshaw, vp-marketing and member services
5	Ophthalmic Mutual Insurance Co.	Vermont	$27,752,640	2,968	Ophthalmic practices	D&O, E&O, employment practices liability, fraud and abuse, medical malpractice, professional liability	Marsh-Captive Management Services P.O. Box 530, Burlington, Vt. 05402-0530	802-864-3510 Fax: 802-859-3599 *www.omic.com*	Robert Widi, member services and sales manager-Ophthalmic Mutual Insurance Co.
6	Exporters Insurance Co. Ltd.	Bermuda	$21,648,687	107	Banking, insurance, telecommunications	Export credit, political risk	BF&M Management Ltd. The ACE Tempest Re Building, 30 Woodbourne Ave., P.O. Box HM 1007, Hamilton, HM 08, Bermuda	441-296-1745 Fax: 441-292-8682 *www.exporters.bm*	Elizabeth Durrant, director
7	MPC Insurance Ltd.	Vermont	$20,708,905	12	Legal services	Professional liability	Marsh-Captive Management Services P.O. Box 530, Burlington, Vt. 05402-0530	802-864-5599 Fax: 802-859-3513	Gary Griswold, vp/senior account manager
8	Franklin Casualty Insurance Co. Inc., A Risk Retention Group	Vermont	$19,377,347	12	Hospitals, physicians	Medical malpractice	Marsh-Captive Management Services P.O. Box 530, Burlington, Vt. 05402-0530	802-864-5599 Fax: 802-859-3599	Kenneth Hoffman, director-risk management
9	OOIDA Risk Retention Group Inc.	Vermont	$18,567,927	4,000	Trucking operations	Cargo, truckers auto liability, unladened	USA Risk Group of Vermont Inc. P.O. Box 306, Montpelier, Vt. 05601	802-229-5042 Fax: 802-229-6280	Cindy Lyford, account manager
10	American Bankers Professional & Fidelity Insurance Co. Ltd.	Bermuda	$18,537,000	1,650	Banking	Combination safety depository liability, D&O liability, excess bank employee dishonesty bond, financial institution bond, Internet banking, stamp bond, trust E&O	Atlantic Security Ltd. Windsor Place, 18 Queen St., Hamilton, HM HX Bermuda	441-295-5425 Fax: 441-295-5444 *www.asl.bm*	Jillian Curran, vp

Source: *BI* survey

The full Directory of Policyholder-Owned Alternative Risk Financing Facilities is available online in the directories area of *www.businessinsurance.com.* The searchable directory allows users to locate alternative risk financing facilities by company name, management company and gross written premiums, among other information. PDF copies of the directory can be purchased from the Crain Information Center at 312-649-5476.

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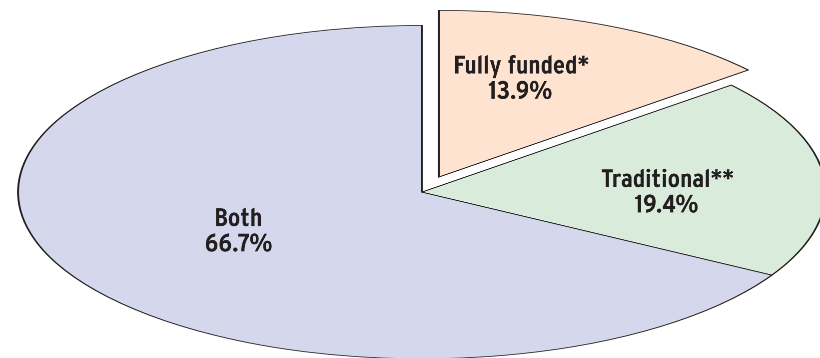
LARGEST RENT-A-CAPTIVE MANAGEMENT COMPANIES

Rent-a-captive management companies ranked by number of facilities.

Management Company	Facilities
Allegro Insurance & Risk Management Ltd.[1]	17
Liberty International Management (Bermuda) Ltd.	3
AIG Insurance Management Services	2
Atlantic Security Ltd.	2
Monkton Insurance Services Ltd.	2
Quest Management Services Ltd.	2

1 Formerly Castlewood Risk Management Ltd.
Source: *BI* survey

TYPES OF RENT-A-CAPTIVE PROGRAMS



*A fully funded program is written by the rent-a-captive, which funds it up to the aggregate limit.
**A traditional program is written through a fronting company rather than by the rent-a-captive.
Source: *BI* survey

Largest rent-a-captive facilities

Ranked by 2002 gross premiums written

Rank	Facility	Domicile	2002 gross premiums written	Estimated 2003 gross premiums written	2002 participants	Estimated 2003 participants	Risks insured	Management company/Address	Telephone/Fax/Web site	Contact
1	North Rock Insurance Co. Ltd.	Bermuda	$214,000,000	$75,000,000	70	85	Auto liability, general liability, property, workers compensation	CNA Risk Services Ltd. Continental Building, 25 Church St., Hamilton, HM 12 Bermuda	441-295-6015 Fax: 441-295-1702 *www.cnabermuda.bm*	Thomas R. McMahon, COO
2	Guardrisk Insurance Co. Ltd.	South Africa	$150,547,995	$161,778,875	95	108	Life, nonlife	Guardrisk Holdings (Pty.) Ltd. Alexander Forbes House, 25 Sauer St., Johannesburg, 2107 South Africa	27-11-378-5000 Fax: 27-11-378-3582 *www.guardrisk.co.za*	Andre Jordaan, financial director; andregj@guardrisk.co.za
3	Uberrimae Fidei Insurance Co. Ltd.	Bermuda	$100,000,000[1]	NA	5	8	All lines	Uberrimae Fidei Insurance Co. Ltd. Wellseley House S., 90 Pitts Bay Road, Pembroke, HM 08 Bermuda	441-295-1646 Fax: 441-292-8062 *www.img.bm*	Francis J. Carter; fcarter@img.bm
4	Artex Insurance Co. Ltd.	Bermuda	$80,900,000	$98,000,000	40	50	Auto liability, general liability, workers compensation	Artex Underwriting Managers Ltd. Sofia House, 48 Church St., P.O. Box 2000, Hamilton, HM HX Bermuda	441-296-6429 Fax: 441-292-8231 *www.rent-a-captive.com*	Peter J. Mullen, president; peter_mullen@ajg.com
5	Lansdowne Insurance Co. Ltd.	Bermuda	$63,000,000	$80,000,000	37	50	Property/casualty	Allegro Insurance & Risk Management Ltd. Burnaby Building, 16 Burnaby St., Hamilton, HM 11 Bermuda	441-295-8495 Fax: 441-292-1196	Andrew McComb; andy.mccomb@allegro.bm
6	Quest Insurance Solutions Ltd.	Bermuda	$56,000,000	$16,000,000	45	40	General liability, property, workers compensation	Quest Management Services Ltd. Skandia International House, 16 Church St., Hamilton, HM FX Bermuda	441-295-2482 Fax: 441-292-1143	Larry Turnbull, lturnbull@questgroup.bm; Nick Frost, nfrost@questgroup.bm
7	Gettysburg National Indemnity (SAC) Ltd.	Bermuda	$33,000,000	$20,000,000	9	11	Property/casualty	Allegro Insurance & Risk Management Ltd. Burnaby Building, 16 Burnaby St., Hamilton, HM 11 Bermuda	441-295-8495 Fax: 441-292-1196	Andrew McComb; andy.mccomb@allegro.bm
8	Hurst Holme Insurance Co. Ltd.	Bermuda	$26,151,000	$85,000,000	20	26	Property/casualty	International Advisory Services Ltd. 44 Church St., Hamilton, HM 11 Bermuda	441-295-3688 Fax: 441-295-1697 *www.iaspark.com*	David P. Pickering
9	Quest (SAC) Ltd.	Bermuda	$26,000,000	$44,000,000	6	14	General liability, property, workers compensation	Quest Management Services Ltd. Skandia International House, 16 Church St., Hamilton, HM FX Bermuda	441-295-2482 Fax: 441-292-1143	Larry Turnbull, lturnbull@questgroup.bm; Nick Frost, nfrost@questgroup.bm
10	The Stuart Insurance Group Ltd.	Bermuda	$17,296,669	$15,000,000	16	16	Auto liability, general liability, warranty, workers compensation	Liberty International Management (Bermuda) Ltd. P.O. Box HM 2455, Hamilton, HM JX Bermuda	441-296-2131 Fax: 441-296-8846	Simon Dowie; simon.dowie@libertyinternational.com

NA not available 1 Estimate
Source: *BI* survey

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INSURER TOPICS

A MONTHLY EDITORIAL SECTION SENT EXCLUSIVELY TO INSURERS AND REINSURERS

Financial Convergence

Banking initiatives yield mixed results

Insurers seeking to refine strategy

By RODD ZOLKOS

As banks work to capitalize on opportunities to distribute insurance products, some insurers are still working on finding the best ways to take advantage of their moves into the banking arena.

Carmel, Ind.-based Assurance Partners Bank, for example, was formed by members of the National Assn. of Mutual Insurance Cos. after 1999's Gramm-Leach-Bliley Financial Modernization Act opened the doors to greater bank involvement in insurance.

"Assurance Partners Bank was formed by 260 mutual insurance companies as a result of the Gramm-Leach-Bliley Act expanding the power of banks getting into the insurance business," said Jim Rush, the bank's chief executive officer.

The insurers took the step in response to the concerns of many mutual companies that their agents might be put at risk by banks acquiring agencies and moving into insurance distribution. There have been some changes, however, from Assurance Partners Bank's original business model, which called for allowing only mutual insurance companies and their agents to use the bank.

"I think it's fair to say that the business model as it was originally written was too restrictive," Mr. Rush said, adding that he suspects other banks formed by insurance companies have probably reached the same conclusion. "It's kind of like requiring all your friends to keep you in business," he said.

Another factor driving the bank to reach out to a broader market was that shortly after it received its charter, the insurance market hardened, and most agents became more concerned with explaining higher rates to clients than trying to support the fledgling financial institution, the CEO said.

As the bank changed its approach, "the biggest difference that I've been aware of is

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Banks still eager to buy insurance agencies / 24D

Agency values increasing as M&A continues / 24E

CPCU Society gathers for annual meeting / 24E

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Banks: Insurers refining strategy

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that we have to drive products in the marketplace that are profitable to the bank," said Mr. Rush, who joined Assurance Partners Bank in March. Still, he added, "Everything we're doing, we're doing with the idea of building a platform through which the agents can augment their business if they choose to do it."

Thus far, agent use of the bank hasn't been overwhelming, Mr. Rush said. "But, in fairness to them, in the past six months we've been trying to show the validity of products in the marketplace before we go to the agents," he said. Before promoting products to agents, the bank wants to demonstrate that there is demand for them, Mr. Rush said.

At the same time, in developing and promoting markets, the bank must ensure it complies with relevant state laws and the terms of its federal thrift charter.

"The bank has to be careful what it delivers through agents because of different state laws," Mr. Rush said. "Even though we've got the banking power to work in 50 states, we still have to be cognizant of that," he said.

And, he added, "One of the things as a thrift we always have to keep in mind is the balance of our portfolio and how it relates to the regulators." Under its charter, no more than 30% of the bank's assets can be in consumer loans and no more than 20% in business loans, with the remainder in mortgages.

Stan Ommen, president and CEO of State Farm Bank, said he isn't sure which his expectations were when the Bloomington, Ill.-based State Farm Group formed its bank in 1999, but he said its results have been excellent.

"I think our results, our response from our customers, have been very positive," Mr. Ommen said. "Our growth has been excellent."

The bank offers an array of consumer banking products through agents who opt to participate. "Ninety-six percent of our agents have chosen to go through the bank training program," Mr. Ommen said.

"The reason for forming State Farm Bank is really all about customer service, being able to provide the customer more services than we could in the past," Mr. Ommen said. In doing so, the insurer also hopes to increase customer loyalty and ties to State Farm, he said.

For banks getting into the insurance business, the focus seems to have settled much more on the distribution of products than on insurance underwriting.

"Banks are primarily in the producer business these days. They're not into the underwriting," said Beth L. Climo, executive director of the American Bankers Insurance Assn. in Washington. "There clearly is strong bank interest in insurance distribution."

"More and more community banks are getting involved," Ms. Climo said, noting that banks continue to acquire agencies as a way of moving into insurance distribution.

Banks' interest in distributing insurance products rather than underwriting them "is likely to be the case for the foreseeable future," said Theodore Augustinos, a partner in the insurance and reinsurance department at law firm Edwards & Angell L.L.P. in Hartford, Conn.

"It's partly a question of economics," Mr. Augustinos said. "Banks make more money taking credit risk than insurance underwriters make taking insurance risk." But, distributing insurance products can provide banks additional fee income selling "a product that often complements their other products and services," he said.

Though banks are focused more on insurance distribution than underwriting, Ms. Climo said her organization still believes the issue of an optional federal charter for insurance companies is "highly significant."

The ABIA is working with the American Insurance Assn. and the American Council of Life Insurance to promote the creation of legislation allowing optional federal chartering of insurance companies, she said. Ms. Climo noted that about half of the ABIA's members are insurance companies that provide the products banks are distributing.

The federal charter is needed to promote efficiency and consistency in the insurance market, Ms. Climo suggested. From the ABIA members' perspective, "If the product can't get on the table in time to serve the customer's needs, that's a problem," she said. "Efficiency comes from having a single set of rules, a single regulator."

In addition, the optional federal charter legislation would provide for deregulation of insurance rates and forms, "and it would let the market regulate rates, rather than an insurance commissioner," Ms. Climo said.

Over the long term, NAMIC's Assurance Partners Bank's Mr. Rush said he thinks insurance companies stand to gain as much from moving into banking activities as banks can from moving into insurance.

"From a potential standpoint, I think this has every bit as much potential as the commercial banks buying the agencies to access the marketplace," he said. "But it has a longer learning curve than anyone ever anticipated. So it's our job to figure out how to use it, and we're still learning."

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Bank/agency cross-selling expectations meet reality

A good insurance client is not always a bank's best prospect, and vice versa

By MICHAEL BRADFORD

Banks looking to expand by cross-selling through insurance agency acquisitions are finding the reality sometimes doesn't match expectations.

While there are notable successes among banks that have increased the sales of products and services by using agencies as distribution channels, many other financial institutions have either abandoned the idea or are selling only a small percentage of their services through the insurance facility, experts point out.

A good insurance client is not always a bank's best prospect, and vice versa, as it turns out.

And there are cultural barriers that sometimes prevent banks and agencies from working smoothly together. Territorial issues between the two organizations, for example, have stifled the amount of cross-selling.

> **'Different people within territories are jealous. They don't want to refer people...because they are scared the other person will screw up the relationship.'**
>
> *Chris Burand*
> *Burand & Associates L.L.C.*

"There's a lot less (cross-selling) than anybody assumed there would be," said Chris Burand, president of Burand & Associates L.L.C., a Pueblo, Colo., agency consulting firm. "Expectations were out of line with reality."

A big barrier to the success of cross-selling is the tendency among both sides to protect their turf, according to Mr. Burand. "Different people within territories are jealous. They don't want to refer people" to the other organization, he said, "because they are scared the other person will screw up the relationship. There's a whole lot of that."

"Bankers are possessive of their clients," said David Holton, president of Wachovia Insurance Services Inc. in Winston-Salem, N.C. "They are reluctant to open their client up to someone they don't know. The trust level has to be built up" before most bankers will feel comfortable referring someone to another service provider, he said.

Sharing clients also makes for complicated compensation scenarios, Mr. Burand said. It is a "huge bone of contention" as to who should get paid for business that comes out of referrals, he said.

"Banks got into an acquisition mode, and then it was like 'What now?'" said Bill Schoeffler, a partner at Oak & Associates in Glen Ellen, Calif. Mr. Schoeffler noted that banks often find that while they wanted an agency for the cross-selling opportunity, customers, in many cases, would rather keep the two services separate.

It's sometimes difficult for banks and agencies to merge their cultures, experts agree.

Mr. Schoeffler noted that insurance agencies tend to be more flexible when dealing with clients than are more-stick-to-the-rules banks. "Agents are sellers; banks are service institutions. They approach it from different standpoints."

And the agency philosophy of getting the best deal for its client can conflict with a bank's top priority of protecting its assets, said John Wicher, principal of John Wicher & Associates, a San Francisco-based insurance investment bank. "That's a different model," Mr. Wicher said.

Mr. Holton pointed out that, from an insurance perspective, "most prospects are true prospects" for commercial lines or personal lines coverage. But the reverse doesn't always hold true as an opportunity for banks. "Banks are more selective about who they lend money to," he said, and agency clients might not all be attractive risks for banks.

Mr. Burand said the trend of banks buying agencies has some geographic distinctions. It first took off in Michigan, with less-than-stellar results. "The failure rate was pretty high," he said of the acquisitions in that state. "Several of the banks sold them back to the agencies, some for dimes on the dollar," when it became clear the two were not well suited to market each others' products, he said.

Today, "the Southeast is definitely the hotbed," Mr. Burand said of the acquisition activity. "It's truly amazing" how eager banks are to gobble up agencies in that part of the country, he said.

Despite the troubles some have experienced, there are banks and

Continued on next page

Continued from previous page

agencies that say they have found success in cross-selling.

"Because we've been doing it so long, it works," said Randy Screen, chief insurance marketing and sales executive officer at Raleigh, N.C.-based BB&T Insurance Services Inc. "BB&T has been in the insurance business 81 years, and this model was built about 16 years ago," he said of the company's method of matching a "strong insurance agency" with its banks.

As at many other bank/agency operations, the main cross-selling focus at BB&T is on commercial lines. But as BB&T develops a new "wealth management department," it is looking harder at marketing personal lines, according to Mr. Screen.

Even without the new department, he noted, "we've gotten a tremendous number of leads from our mortgage department for personal lines."

Cross-selling works at BB&T because the bank has a "very, very strong sales culture," which makes it a fit for the agency way of doing business, Mr. Screen said. For a bank with a long history of insurance experience, "it's a sales culture that meshes," he said.

Indeed, BB&T last week announced an agreement to acquire McGriff, Seibels & Williams Inc., a Birmingham, Ala.-based brokerage with $137 million in 2002 brokerage revenues that would be BB&T's largest such acquisition so far.

> **'The cross-selling piece is often shrugged off as unsuccessful...but any time you get a qualified referral, it gets your foot in the door.'**
>
> *John Wepler*
> *Marsh Berry & Co.*

Acordia Inc., acquired two years ago by Wells Fargo & Co., found its association with the banking company worked well because the bank had a cross-sell culture already in place within its organization, said Kevin Conboy, president and chief executive officer at Chicago-based Acordia.

"The Wells organization has always had an interest in cross-sell," he said, by focusing on customer needs and providing multiple bank products to individual clients. "When we put Acordia into the equation," Mr. Conboy added, that focus was not disrupted.

Cross-selling works for Acordia and the bank partly due to a couple of important efforts, he explained. "We have dedicated business development officers within each region," he said. "Their focus is to facilitate the cross-sell initiative by establishing relationships with business development managers at Wells Fargo."

And cross-selling is helped by a proprietary e-mail system that "focuses on key customers," Mr. Conboy said. The system generates notices that are sent to the bank's "relationship managers" when one of their clients has an insurance coverage that is about to renew.

Mr. Conboy acknowledged there were challenges to meshing the bank and agency cultures. "There are always cultural challenges any time there's an acquisition," he said. "For the first 12 months, we spent a fair amount of time getting to know one another. There was a learning curve on the bank's part as to how we operate."

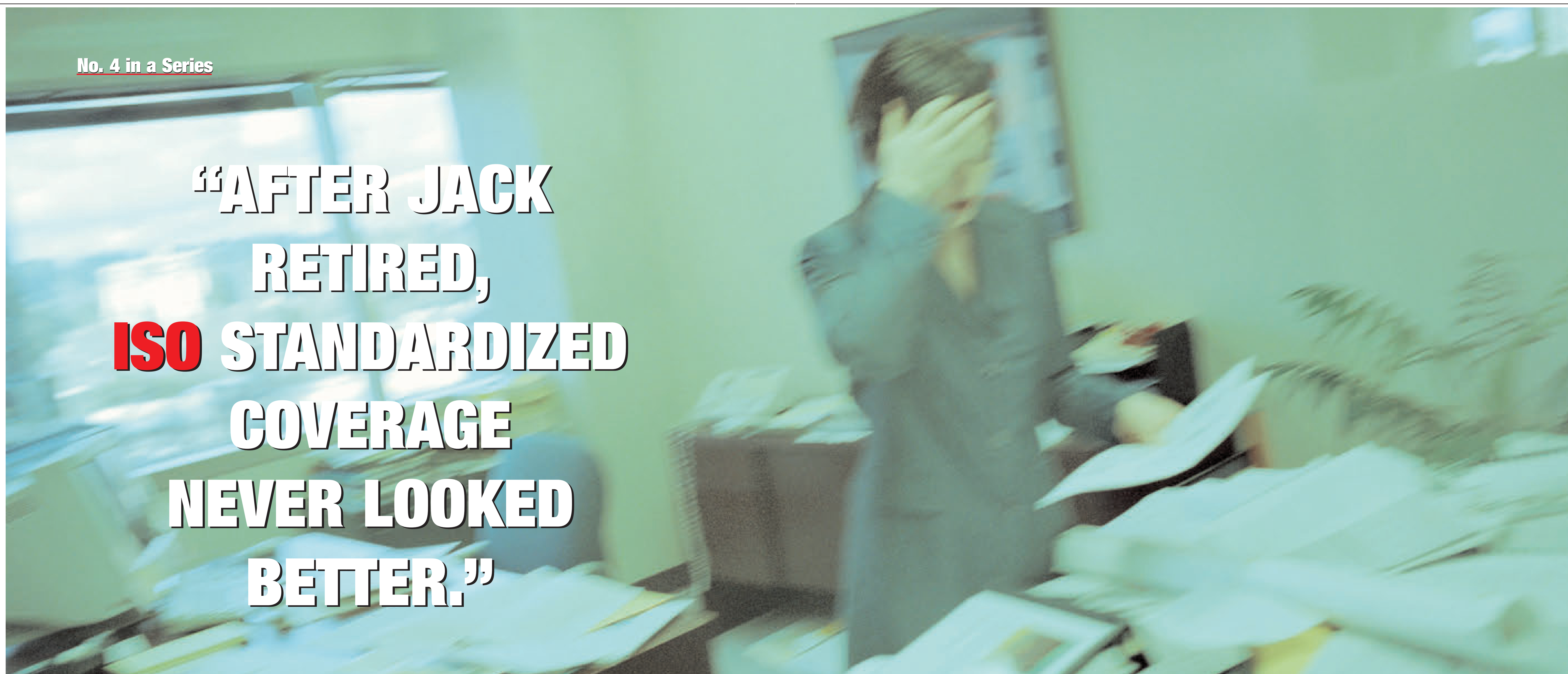
At Wachovia, cross-selling has been in place for a year, Mr. Holton said. Of the new commercial property/casualty and life business written by 12 agencies, 13% was generated from bank referrals, he said, and that amount is expected to increase substantially.

Many banks are learning how to make agency acquisitions work and are not as concerned that cross-selling be as big a factor in the success, according to John Wepler, executive vp of Marsh Berry & Co. Inc. in Concord, Ohio.

Banks have begun to acquire "higher-quality" agencies, he said, and they realize that "our insurance operation has to be successful in and of itself. Cross-sell is not our biggest priority," Mr. Wepler said.

Cross-selling will work in time, he predicted. "The cross-selling piece is often shrugged off as unsuccessful," he noted, "but any time you get a qualified referral, it gets your foot in the door."

Mr. Wepler agreed that "the idea of cross-selling is less of a goal" for many banks and is being treated as a way to "add to the basket of products that they offer" while increasing the number of channels available to reach customers and provide those products.



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INSURER TOPICS

Are banks getting the quality they're paying for?

High multiples paid for top agencies put pricing pressure on the market

By SALLY ROBERTS

Banks wanting to enter into the insurance industry via agency acquisitions are willing to pay big bucks to do so and are driving up agency values and expectations along with them.

Because these banks have no existing insurance capabilities, they are looking for the highest-quality firms to be their platform agencies on which to grow and expand. And because many of these high-quality firms are not openly on the market, banks pay substantially more than their agency-buying counterparts as an incentive for the agency to sell, experts say.

In 2002, for example, banks paid multiples, on average, of 8.3 times earnings before interest, taxes, depreciation and amortization—or EBITDA—or 2.5 times revenues for their initial agency acquisition, according to statistics compiled by Marsh Berry & Co. Inc. This compares to multiples of 6.9 times EBITDA or 1.8 times revenues for agencies sold to public brokers and 5.7 times EBITDA or 1.3 times revenues for agencies sold to privately held agencies during the same period.

As a result, average agency values continue to rise. In 2002, for example, the average agency value was 6.97 times EBITDA, a 5.8% increase over 2001, and the average agency value as a multiple of revenue increased 15.2% in 2002 to 1.9, according to Marsh Berry.

Merger and acquisition experts say the higher multiples banks are paying reflect the quality of firms they are buying.

"A lot of people think that banks have overpaid for agencies, and there has been some of that," said John Wepler, a senior vp with Marsh Berry in Concord, Ohio. "But I think it's more driven by the quality of the agencies that have been acquired by banks, which has translated to higher multiples."

"The banks have no core competency in the insurance business," Mr. Wepler said. "As a result, they place a very high value on the infrastructure that they acquire…and they are targeting extremely high-quality agencies."

"What many banks are doing is trying to find a platform agency that they can build on," said Jim Campbell, senior vp and leader of Reagan Consulting Inc.'s bank consulting practice in Atlanta. "There's a profile for a platform agency, and that is a high-performing, high-achieving, well-led organization. And those are more-valuable organizations, and they're often the ones not for sale…so they have to be motivated a little bit."

Although banks might pay higher multiples, they are, in most cases, not widely overpaying, Mr. Campbell said.

Banks "know they cannot do deals that are either going to provide an insufficient return on capital or dilute earnings per share," he said.

Nevertheless, some experts maintain banks are simply paying too much.

"I'm a little concerned about it," said Bill Schoeffler, a partner with Oak & Associates in Glen Ellen, Calif. "You figure they'd do a lot of due diligence, but it just baffles me why (banks) pay so much."

The way Mr. Schoeffler sees it, the price is based more on wishful thinking than on good empirical data.

> **Banks 'know they cannot do deals that are either going to provide an insufficient return on capital or dilute earnings per share.'**
>
> *Jim Campbell*
> *Reagan Consulting Inc.*

"If you were to use a discounted future earnings valuation approach and you were to show 20% to 30% growth over the next three to four years, you can justify a price of 1.5 to 2 times revenues, but that's not feasible long term to have that kind of growth rate," he said. Banks are paying such multiples because they're "all excited about getting into the business and are willing to look favorably at the numbers."

Timothy J. Cunningham, a principal with OPTIS Partners L.L.C. in Chicago, agrees.

Banks "are buying into margins that, I think, simply are not sustainable," Mr. Cunningham said. The purchases are driven, in part, by the hard market and, in part, by unsound financial practices.

"You can hit big margins in this business if you don't reinvest in people and infrastructure," but that's the "death knell" of a firm, he said.

"The banks that bought agencies two to three years ago now think they did the smartest thing in the world because of all the runup" due to the hard market, Mr. Cunningham said. The real test is going to come when the market softens and they find out just how good a deal they made. "The jury is still out," he said.

In many cases, these high price tags are resulting in lofty expectations among other selling agencies, experts say.

"I think expectations have been set, sometimes inappropriately," said Mr. Campbell of Reagan Consulting. "There's a perception out there that banks are the most aggressive buyers, so if you're an agency seller, you're saying, 'Let's talk to a bank, because we might get a real sweetheart deal.'" In reality, the offer may look very similar to what another buyer might be willing to pay, he said.

"I think the pricing pressure it has put out there is the expectations by agency owners that maybe don't want to sell to a bank but still think their agency is worth a multiple of eight times," said Rob Lieblein, managing principal with WFG Capital Advisors in Harrisburg, Pa. "Clearly, the public brokers are not paying quite the premium because they already have the infrastructure, they have the systems and they have the expertise, so from a strategic standpoint, they are not paying the premiums that a bank would."

"There is an inflated expectation of value, no doubt about that," Mr. Wepler said.

"I think it's important to note that those agencies getting more than eight times EBITDA are growing organically in excess of 20% and throwing off EBITDA margins in excess of 28% and they have employee productivity that is in the top 10% of the industry," he said. "I think what is frustrating for a lot of agency owners is when they go out to the market and they get an offer of 6.5 times (EBITDA), they feel that they're being taken advantage of, when in reality, it's just a reflection of their quality."

While quality plays a major role in the higher premiums banks pay, one also has to look at the structure of the deal.

Most bank/agency deals contain some kind of an earn out based on future earnings performance. So while a deal's purchase price may appear large initially, the actual price may be lower if predetermined profit levels are not achieved, experts say.

They also note that while banks may pay more than eight times EBITDA for their platform agencies, subsequent agency purchases are more in line with what public brokers pay.

Marsh Berry found, for example, that banks paid, on average, 6.79 times EBITDA or 1.8 times revenue for subsequent agency transactions in 2002.

CPCU Society 2003 Annual Meeting

Hard market beginning to ease for smaller risks

By MICHAEL BRADFORD

Cracks are starting to appear in the hard market as property insurance prices weaken and some insurers work to beef up their underwriting volume, a panel of experts agreed.

It's the smaller commercial risks that are seeing the first indications of a softening, said Thomas B. Ahart, president of the agency Ahart, Frinzi & Smith in Stewartsville, N.J. "In metropolitan areas, in large lines where there's a lot of catastrophic exposure, that's still extremely hard," he noted.

Addressing an audience during a panel discussion at the CPCU Society's 2003 Annual Meeting in New Orleans in October, Mr. Ahart said, "We're really starting to see an easing of the market on some of the smaller lines, especially in commercial lines."

Some insurers are pressuring branch managers and marketing personnel to put more volume on their books, "which they, in turn, are passing on to agents," Mr. Ahart noted. "And, as we see that, we are starting to see some price changes."

While many insurers remain disciplined about keeping prices up, others are renewing at prices 25% to 30% lower, Mr. Ahart said.

Another panelist agreed that prices are falling in some instances.

There is some "actual softness on the commercial property side," with around 20% of accounts renewing at midyear at rates lower than the previous year, said Robert Hartwig, senior vp and chief economist with the Insurance Information Institute in New York.

But Mr. Hartwig added that many casualty risks are affected by the "out-of-control tort system," and there is "relatively little softness" for those exposures. "You see some moderation," though, he noted.

Workers compensation rates continue to remain firm, Mr. Hartwig said. "You still have severe problems in that line, which is likely to produce an underwriting loss of $2 billion or so this year," he said.

Among personal lines, "homeowners is still a big, big money loser, and combined ratios are still well in excess of 100% in most parts of the country," according to Mr. Hartwig. Automobile coverages, though, have "achieved some sort of reasonable combined ratio, many times in the low 90s," he said.

This year's rise in the stock market is giving a boost to insurers' investment income, but that alone won't end the hard market, Mr. Hartwig said. "The onus is still on pricing, and it's still on underwriting. It's up to management to keep their focus on that," he said.

Mr. Ahart said insurance buyers are wondering when the hard-market cycle will end. "I think they clearly understood the problems that we've had over the last three years and have pretty much accepted it when you talk about the industry. Unfortunately, some people still think it's a social system instead of a for-profit system."

Louisiana Insurance Commissioner J. Robert Wooley, who participated as a panelist, said it is important for insurance regulators as well to get that message. "I think we have to be cognizant of the fact that companies aren't charitable organizations and they don't have to write in your state any more.... I think the states that understand that and react to that are going to be able to attract those companies."

But, Mr. Wooley added, "you still have to protect the consumer, so it's a balancing act" in dealing with both sides.

Roger S. Lawson, president of the Alliance of American Insurers and moderator of the discussion, asked, "Why can't companies maintain pricing and underwriting discipline just as the returns on investment are reaching a reasonable level? They have all these marvelously trained underwriters out there, but somehow they just don't seem to adhere to those principles at the right time."

"I don't know," answered panelist Robert H. Moone, who is president and chief executive officer of State Auto Insurance Cos. in Columbus, Ohio. "It's almost a masochistic kind of mentality."

That mentality is one by which insurers say, "This feels awfully good, we're making a little bit of profit, so let's go out and try to get more by cutting prices," Mr. Moone said. "I don't understand that mentality, either."

He mentioned that, at a recent conference, a speaker from Lloyd's of London who exhorted insurers to maintain underwriting discipline was bombarded by responses from underwriters and others who were adamant that, when a softening takes hold, the chase will be on for market share.

Mr. Moone said his reaction to such comments by competitors was, "That's fine, please do that, because we are going to be very, very disciplined and stay focused on the things that it takes to run an insurance company in a manner that generates a profit. If that means we have to sacrifice market share at some point, we're willing to do that."

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CPCU Society 2003 Annual Meeting

Terrorism coverage poses challenges, opportunities

By MICHAEL BRADFORD

Despite the fear and uncertainty that surrounds terrorism, careful insurers can provide coverage for the catastrophic exposure and, in fact, may be able to gain competitive advantages by underwriting it properly, according to a terrorism expert.

"I think terrorism is a manageable risk," said Peter W. Ulrich, managing director with catastrophe modeler Risk Management Solutions Inc. in Newark, Calif. "I don't envy the underwriters who are being forced to write it, but I think the tools are out there to help you understand and manage the risk."

"While terrorism underwriting is certainly very challenging, any time that something is very difficult in the market, if you can understand more than your competitors, there may actually be some opportunities for you," Mr. Ulrich told underwriters during a panel discussion at the 2003 Annual Meeting of the CPCU Society in New Orleans last month.

"Terrorism is a very focused peril. With the exception of weapons of mass destruction, they can't cause damage across a huge area." Mr. Ulrich said. Therefore, it is important for underwriters to know "exactly where you are writing a risk" and whether there are potential targets nearby.

"An attack could occur anywhere," Mr. Ulrich said, but it is more likely to happen at a high-profile location. A terrorist who plans to die in an attack wants to "maximize the utility of the event," he said. To strike a blow at the United States and encourage fellow terrorists to strike, "this is something that should have a huge economic impact, the potential for a large number of casualties and also symbolic impact."

That made the World Trade Center an ideal target, Mr. Ulrich suggested. "If you're looking at those criteria, there are not that many targets that would really satisfy a terrorist's goals."

Given a finite number of targets and "relatively small damage footprints," underwriters would be mistaken to consider all sections of areas such as Manhattan to be at high risk of damage from an attack, Mr. Ulrich explained. A section near a potential target should be considered riskier than a neighborhood in the same city but farther away from an area where terrorists might strike. Again, he stressed, "it is important to know exactly where you are writing a risk."

'I don't envy the underwriters who are being forced to write (terrorism coverage), but I think the tools are out there to help you understand and manage the risk.'

Peter W. Ulrich
Risk Management Solutions Inc.

Under the Terrorism Risk Insurance Act, insurers cannot exclude terrorism coverage, although policyholders are not required to buy it. Insurers have been "put on the hot seat to provide coverage for a peril you probably don't want to write," Mr. Ulrich said. But those who differentiate exposures "at a very high level of resolution" across areas considered likely locations for terrorists to strike are able to more effectively manage the risk, he added.

Mr. Ulrich said underwriters have to differentiate terrorism exposures on a multiline basis. "If you're a property underwriter, you may think you're doing a great job diversifying your risk. But if you're sitting right next to a comp writer" who is working on coverage for the same locations, it is important to remember that those exposures should receive the same type of consideration.

There are uncertainties as to what would happen if TRIA were to expire in 2005 without being renewed, Mr. Ulrich noted. "It's one thing to manage the risk when you've got the government's 90% quota share there, but what happens if that goes away?" he asked.

Even with TRIA in effect, there is uncertainty as to how it will work, said Gregory D. Hopp, an insurer attorney with Cozen O'Connor in Chicago.

"All of us who talk about the terrorism legislation are going out on a limb, simply because until there is a terrorist act" to which TRIA applies, no one will know exactly how it will work, said Mr. Hopp, who was a panelist at the session.

For instance, Mr. Hopp pointed out, coverage applies under the act if a "certified act of terrorism" is committed in an attempt to "'coerce the civilian population,' whatever on Earth that means, 'or to influence the policy…of the U.S. government by coercion.'"

And terrorist acts arising out of a war can be excluded, he noted. "As I read it, if there had been a terrorist attack by Iraqi interests" if Congress had declared war on Iraq, (that) could be excluded and TRIA would have no application, Mr. Hopp said.

Also on the panel was Bohdan Krywiak, manager-technical services for Crawford Adjusters Canada Inc. in Vancouver, British Columbia.

The panel moderator was Darnell W. Pettengill, vp of claims/contracts for American Agricultural Insurance Co. in Park Ridge, Ill.

CPCU Society 2003 Annual Meeting

Producers exposed to E&O claims for mold damage

By MICHAEL BRADFORD

Agents and brokers who ignore the exposure their clients face from mold risk some day being held accountable for that oversight, according to an expert on the growing liability.

Those who place coverage could find themselves on the hot seat when a risk manager finds there is no insurance in place for mold-related damage, said David J. Dybdahl, president of American Risk Management Resources Network L.L.C. in Madison, Wis.

"Insurance to cover mold is available, but risk management advisers—brokers and agents—are ignoring it," said Mr. Dybdahl. This oversight on the part of intermediaries has resulted in an "unprecedented professional liability loss exposure for insurance advisers," he said, and, in turn, has led underwriters to exclude claims against agents and brokers who are the targets of claims because they didn't place the coverage.

Mr. Dybdahl made his remarks at the CPCU Society's Annual Meeting in New Orleans in October.

He contends that intermediaries have failed to put mold coverage in place for policyholders largely because they simply are unaware that it exists in the environmental impairment liability insurance marketplace.

And agents and brokers likely won't be the only ones who experience unforeseen problems from the mold exposure, Mr. Dybdahl suggested.

"The effects of mold exclusions have yet to be felt," he said. Uninsured mold claims on property policies will transform into liability claims against contractors, building products suppliers, manufacturers and advisers to property owners, Mr. Dybdahl noted. "I think this will start next year," he said.

Lindene E. Patton, New York-based vp and counsel with Zurich Specialties, a unit of Zurich North America, agreed that claims are on the rise against some service providers. She said that recent targets of claims have included contractors hired to take care of problems that led to a mold outbreak and hygienists whose responsibility is to monitor the presence of mold.

"What we're seeing in the high-profile cases," she said, is not a single claim but a "series of claims" against parties with some alleged responsibility for a mold problem.

Ms. Patton, who participated in the discussion with Mr. Dybdahl, warned underwriters in the audience that covering mold exposures is not for all insurers.

"The complexity of mold and offering mold coverage is such that it could take down a specialty underwriting unit pretty quickly," she said.

Zurich, which offers coverage, is being "very cautious to avoid that happening, while still providing a valuable coverage to our insureds," Ms. Patton said. "And that's a tough balance in a market where you're talking about potentially high frequency and unknown severity."

Underwriters also face the challenge of fraudulent mold claims, she pointed out, calling that the "greatest practical challenge" in writing mold coverage. The main types of fraud are "house cooking," in which mold is deliberately grown, and the filing of claims by those who are trying to avoid responsibility for poor maintenance of a structure.

In addition, "junk science is definitely a problem" for insurers, she said, emphasizing that there is a lack of legal standards related to mold exposures.

Property owners are clamoring for coverage but in a way that makes it difficult to meet their needs, Ms. Patton noted. "There is an overwhelming demand for mold-related insurance products," she said, "but it is very unfocused. Everybody wants it, but they want it for nothing."

Ms. Patton predicted that a broad array of coverages will one day be available as insurers work through the challenges of how best to underwrite the exposure.

Mr. Dybdahl agreed. "The expertise to develop mold insurance products exists today. There are people who actually know this stuff."

"It will be better for everyone involved, except the trial lawyers, if consumers are given options for purchasing the appropriate coverage" to protect against mold damage, he said. "We've got to invent the insurance and make it available. If they don't buy it, too bad."

CPCU Society meeting draws 3,800 attendees

Hugh B. McGowan stepped into the role of president of the CPCU Society at the group's 2003 Annual Meeting last month.

Mr. McGowan, who is president and chief executive officer of McGowan Insurance Group Inc. in Indianapolis, replaced outgoing president James R. Nau. Mr. Nau is general manager, residual markets division, at the National Council on Compensation Insurance in Boca Raton, Fla.

The meeting, held at the New Orleans Marriott Hotel at the edge of the French Quarter, drew around 3,800 attendees and guests for four days of educational sessions and recreation Oct. 11-14.

Next year's meeting will be held Oct. 23-26 in Los Angeles. More information is available from the society at 800-932-2728 or at *www.cpcusociety.org*.

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Hurricane: Light damage seen

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can withstand winds at even higher speeds than Fabian's, he said.

If Fabian had struck south Florida, Mr. Khanduri speculated, even with building codes strengthened after Hurricane Andrew in 1992, "it would have caused much more damage" than in Bermuda.

There is something of an issue, though, with roof construction in Bermuda, Mr. Khanduri noted. He reported seeing "'widespread damage" to the slate tiles across the island.

Indeed, many homes had blue tarps stretched over sections of roofs several weeks after the storm, exposing a problem in recovering from the hurricane that is unique to the island. The demand for the slate that is produced on the island was so high after the storm that many residents were still waiting for repairs in late October.

Mr. Osborne said he heard accounts that a synthetic roof tile manufactured in Bermuda by SKB Coatings Ltd. withstood the storm better than slate. "It makes sense for us to investigate that; maybe slate roofs are more risky" for the insurer and property owners, he said.

James Perry, general manager at SKB, said he was unaware of any incidents in which his company's tiles let go in Fabian's winds. Some were damaged by falling debris, he acknowledged, and, testifying to the strength of the glue used to hold the tiles down, "one home had a flat roof that flew off" in one piece because the tiles wouldn't let go. "It landed in a neighbor's living room," Mr. Perry said.

Insurers and brokers in Bermuda are among the island's best prepared, with contingency plans that can be activated if a hurricane causes problems. They found, though, that the storm presented some difficulties that could not easily be overcome.

"Communications became a difficult issue," said Mr. Osborne. "Cell phones were not working well. Ours worked pretty well in comparison with others," he noted, but some users were "out of luck."

"You do learn from these things," said John English, chairman of JLT Holdings (Bermuda) Ltd. "One thing we needed was standby batteries for our PCs and cell phones as well."

The building where JLT is housed was not damaged. The firm had shipped backup data tapes off the island, just in case. "One of the key things for us was that we had the forewarning" that the storm was on the way, said Mr. English, "so we had the backup tapes shipped to New York."

"Companies like ours go through a process of mock hurricanes before the season starts," said Mr. Titterton of BF&M. "This year, we went to the nth degree," he noted, playing out a scenario in which the insurer's Hamilton facility was knocked out and operations were conducted from backup systems in place in Toronto. "It went very smoothly," he said.

Mr. Titterton pointed out that some of BF&M's staffers in St. Georges were cut off from the office by the damaged causeway. "That was not a problem," he said. "They went to work on the damage in St. Georges."

But like others, BF&M did experience some communications headaches. Anyone working from home was unable to use a residential line if a portable phone was connected to it. Those phones work through a base unit that needs electricity. "Anyone who didn't have an old-fashioned phone" or a working cell phone couldn't make a call, Mr. Titterton said.

Some Bermuda businesses are considering contingencies for loss of creature comforts from future storms. Bathing, for example, can be a challenge when the water isn't flowing at home because of storm damage.

JLT Holdings is planning a move next year and the new space will include shower facilities, said Paul Bailie, a partner in the Bermuda office. The present office has just one, which could have provided soothing showers for harried and exhausted staffers.

But, Mr. Bailie lamented, "I found it had no hot water hooked to it."

PHOTO: TAMELL SIMONS

The roof of the Sonesta Beach Hotel was severely damaged by Hurricane Fabian earlier this year.

London companies see opportunities in Bermuda

By SARAH VEYSEY

While the London and Bermuda markets have sometimes been viewed as rivals, some U.K. companies see the island as a land of opportunity.

Since the hard market picked up steam in 2001, several London companies have set up operations in Bermuda, including Aspen Insurance Holdings Ltd., Catlin Group Ltd. and Goshawk Insurance Holdings P.L.C.

The companies say they have made such moves for a variety of reasons, including diversification, geographical proximity to the United States and, in many cases, the ability to write business they would otherwise lose.

"Anybody who is selling insurance and reinsurance on a global basis today is going to want to be in both markets," said Chris O'Kane, chief executive of Bermuda-based Aspen. Aspen Re, formerly known as Wellington Re, was set up in 2002 and is 20% owned by London-based Wellington Underwriting P.L.C. Aspen Re principally writes specialty business in Bermuda.

Bermuda is a mature marketplace, and "the way we measure it is, 'Do we see our brokers and our clients in Bermuda?' and the answer is 'Yes,'" said Mr. O'Kane. "It is certainly a significant insurance market, and that attracts business."

Graham Pewter, president and CEO of Catlin Insurance Co. Ltd. in Bermuda, said that operating in several markets allows the company to get the best distribution of business. Catlin's parent, Catlin Group Ltd., also has a Lloyd's of London operation.

"Bermuda was the obvious place for the company to establish a second operating platform," Mr. Pewter said.

Catlin Insurance writes property treaty reinsurance, casualty treaty reinsurance and structured risk products, among others. Catlin Group's Lloyd's operation writes professional indemnity, financial institutions, reinsurance, energy aerospace, industrial property and marine business, among other things.

Last week, Catlin said that its Bermuda operation is seeking approval to open an office in the United Kingdom (see story, page 41).

There is business in the Bermuda market that is often not shown to underwriters in London, and vice versa, explained Mr. Pewter. So having a foothold in both markets enables Catlin to see more business, he noted.

"Bermuda is, obviously, a major property catastrophe market, it is a major player in nontraditional insurance and reinsurance, and there is a captive market as well," he said.

Another important factor behind Catlin's decision to open a Bermuda arm is that large insurance placements at Lloyd's are subject to rules regarding allocation of risk, said Mr. Pewter. Companies based solely at Lloyd's of London are limited with regard to the amount of participation they can have in certain placements, he explained, and being both at Lloyd's and in Bermuda allows Catlin to increase its participation.

Being in Bermuda also gives the company a much closer physical presence to the U.S. market, he added.

Andrew Green, partner in the insurance practice at the accounting firm Mazars in London, said that he has seen great interest from London-based clients looking to set up operations in Bermuda. And, Mr. Green noted, Bermuda's tax structure is not a driving factor in those decisions.

"Having a Bermuda company, owning a Bermuda company won't get you out of U.K. tax—you're still going to pay U.K. tax on your profits, one way or another," he said. "So I think it was much more of a commercial call—the development and the diversification of the business—and that's why people go there."

"I have been working with a number of reinsurers who are looking to diversify out of London. And Bermuda is an obvious choice," in part because of the island's regulatory environment, he said.

The advantage of diversifying in such a way has been illustrated by the recent example of Goshawk, Mr. Green said. Goshawk's Lloyd's syndicate recently was placed into runoff, and the company has said it will concentrate on its Bermuda operation, Goshawk Re (*BI*, Nov. 3).

Several London-based brokers have also expressed interest in setting up operations in Bermuda, according to Mr. Green, because it is easier for them to serve the Bermuda market on the ground than from London.

But there are potential problems for U.K. companies looking to set up operations in Bermuda, not the least of which is the need to attract and retain staff, sources say.

Attracting staff willing to work in Bermuda may be difficult, said Mr. O'Kane, and it can be an expensive process for London-based companies.

"If you are a London operation and you want to set up there, you actually want your own people to be based there—people you can trust who understand your ethos and your culture and what you are trying to do, but also who will be acceptable to the local market," said Mr. Green.

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Sponsored: Hospitals help doctors obtain coverage

Continued from page 4

and immediately solve this problem and make it less pricey for them, so they're asking hospital administrators for financial assistance," he said.

While pressure from physicians may be one reason that hospitals consider sponsoring a physician program, the main reason is "that the administration wants quality physicians to stay, and they want to provide quality services to the community," Mr. Greve said.

There are a variety of ways to structure a hospital-sponsored physician program, Mr. Greve said.

In the traditional model, a hospital works with an insurer to obtain volume discounts for physician buyers, Mr. Greve explained. But because the current volume of business is so high and there's no need to write the business at a discount, "not many, if any, carriers will participate in that type of approach today," he said.

Instead, the most common approach today is to have a commercial insurer front a hospital's captive, which reinsures the physicians' medical malpractice risks, he said.

Under this type of arrangement, the fronting insurer may be able to perform most traditional insurance company functions, such as underwriting, pricing and claims, he said.

> **Hospitals sponsor insurance programs because they want 'quality physicians to stay, and they want to provide quality services to the community.'**
>
> *Paul A. Greve*
> *Willis North America Inc.*

One of the disadvantages of that approach, though, is that the collateralization costs may be onerous, he said. Fronting insurers will want a letter of credit posted for each policy year, and it "may make a lot of CFOs pretty unhappy to have your credit tied up like that for a considerable period of time," he said.

In addition, "there are really only a handful of carriers today that are willing to front in the current environment," he said.

There are several legal, regulatory and practical considerations to address before implementing such a program, Mr. Greve said. "Therefore, early involvement of legal counsel in a program like this is absolutely essential," he stressed.

One of the biggest issues hospitals need to be aware of is the potential for violations of anti-kickback statutes or the physician self-referral laws commonly known as the Stark laws, he said.

Stark laws prohibit physicians from referring Medicare patients for certain services to entities with which they have a financial relationship. If hospitals are effectively subsidizing physicians' malpractice premiums, that arrangement could be seen as providing an inducement for the physicians to refer Medicare patients to the hospital, Mr. Greve explained.

In January, the Office of Inspector General outlined general guidelines for hospitals that would make physician insurance programs compliant with the Stark laws.

Among the OIG's criteria is that a hospital-sponsored program be temporary, he said. "So, any program you put together is going to have to be done on an interim basis," he said.

In addition to the Stark laws, state insurance statutes and regulations also must be reviewed before implementing such a program, Mr. Greve said.

Certain states, for instance, may require the use of admitted paper. That means the program must use a fronting insurer, which creates significant additional cost, he said.

"You need to ask yourself whether the benefits of these programs outweigh the risks," Mr. Greve said.

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NASHVILLE, Tenn.—The American Society for Healthcare Risk Management Annual Conference and Exhibition attracted nearly 2,000 people to the Gaylord Opryland Resort and Convention Center in Nashville, Tenn., Nov. 1-4.

The conference offered health care risk managers a variety of networking opportunities and educational sessions on a wide range of topics, including perinatal risk management, alternative risk financing strategies, patient safety strategies and security incident liabilities.

Next year's conference will be held Oct. 17-20 at the Marriott World Center in Orlando, Fla.

For more information, contact ASHRM at *www.ashrm.org*.

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ASHRM 2003 Annual Conference and Exhibition

Integration ends hospital's fractured risk handling

By **SALLY ROBERTS**

NASHVILLE, Tenn.—Executives at Geisinger Health System were motivated to adopt a new approach to risk management when the medical malpractice liability insurance crisis coincided with the collapse of a merger with another hospital system.

New leadership at the Danville, Pa.-based teaching hospital and new patient safety standards from the Joint Commission on Accreditation of Healthcare Organizations helped facilitate that change, which resulted in a new integrated approach that combined risk management, patient safety and performance improvement.

"We knew there were more ways to skin a cat," said Denise M. Shope, director of performance improvement and clinical risk management for Geisinger. "We just had to figure out what was going to work for us."

Geisinger's integrated approach is a far cry from the fragmented risk management and performance-improvement programs that were in place prior to a 1998 merger agreement between Geisinger and Penn State Milton S. Hershey Medical Center in Hershey, Pa. Ms. Shope reviewed the transformation during a session at the American Society for Healthcare Risk Management's annual conference, held earlier this month in Nashville, Tenn.

Before the merger, performance improvement, also known as quality assessment, was housed under nursing, and there was "little to no interactivity" with risk management, Ms. Shope said. Geisinger's reporting structure was very different, and "we shared data only when we had to."

"Then came the apocalypse," Ms. Shope said, referring to the merger between Geisinger and the medical center in Hershey. "It was very obvious that the cultures were very, very different."

"We spent two years and a lot of money to try to make it work," but the merger was dissolved and the "divorce" was final in July 2000, she noted.

While a lot of people were focused on the merger, the medical malpractice liability crisis was emerging in Pennsylvania, she said. "No one realized that the number of claims had doubled and our payouts had increased exponentially."

"We started to get worried that the claims coming in would not get covered," she said. Geisinger had formed its own captive insurance company in 1995.

"We knew we had to do something fast," she said.

New leadership at Geisinger following the de-merger helped facilitate that, she said. In addition to a new chief executive officer and president, a new vp was named and charged with aligning risk management with performance-improvement activities, Ms. Shope said.

The goal was to increase sharing of knowledge and information, she said. "We felt we could effect change by pulling our resources together and all push in the same direction," she said.

Around this time, the JCAHO, which accredits health care providers, published new patient safety standards that called for the formation of a patient safety committee, Ms. Shope said. Geisinger formed a new committee and also sought to integrate it with risk management and performance-improvement functions.

That created what Ms. Shope called "mild risk management schizophrenia."

Patient safety always came under risk management; it just wasn't called that, she explained. One of the hurdles that the department had to overcome was the egos involved, she said, noting that "those in risk management felt we were already doing this." As a result, roles had to be clarified, she said.

"It's all one department now," Ms. Shope said of the three divisions. "We share data, and we collaborate on initiatives. We still have core traditional risk management and quality-improvement functions, but it's more collaborative between the disciplines."

As director of performance improvement and clinical risk management, Ms. Shope reports to a vp and associate medical officer along with Geisinger's patient safety officer. A risk manager, performance improvement coordinator and patient service coordinator all report to Ms. Shope.

The integrated model has resulted in appreciable returns, Ms. Shope said in a follow-up interview.

"We definitely have measurable improvement when it comes to looking at decreasing variations in care, so that when it comes to meeting and exceeding standard of care, we can demonstrate that," she said. "We've seen a decrease in the frequency of lawsuits, although I always caution on taking credit for that. We've also been able to effect changes in various processes that we know are based on best practices and science where we can improve patient outcomes."

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ASHRM 2003 Annual Conference and Exhibition

Customer service an important factor in med mal claims

Alienated patients seen as suit risk

By SALLY ROBERTS

NASHVILLE, Tenn.—One way hospital risk managers can reduce the liability arising from emergency room care is to focus more on customer service, a medical expert contends.

In addition to obvious instances of negligence, there are other, psychological reasons that individuals bring medical malpractice suits, said Dr. Diane Sixsmith, chairman of emergency medicine at New York Hospital Medical Center of Queens in Flushing, N.Y. In some instances, patients sue because they didn't like the way they were treated in the ER. They view their treatment as having been provided by uncaring, unconcerned and unfriendly doctors and nurses, she said.

> **'My theory is, bad customer service is bad patient care.'**
>
> *Dr. Diane Sixsmith*
> *New York Hospital*
> *Medical Center of Queens*

Indeed, emergency rooms are often their own worst enemies, because they can be overcrowded and understaffed and the personnel employed there can have attitudes that alienate patients, who are only too happy to sue if they have a bad outcome, Dr. Sixsmith said. She spoke during a session of the annual conference of the American Society for Healthcare Risk Management, held earlier this month in Nashville, Tenn.

"My theory is, bad customer service is bad patient care," Dr. Sixsmith said. Patients who leave happy with their care are less likely to sue even if there is an unfavorable outcome. So "customer service is one of the things institutions should focus on to limit liability," she said.

Dr. Sixsmith noted that an estimated 20% of all medical malpractice litigation arises from the emergency room. There are several reasons the ER is such fertile ground for litigation, she said.

First, "patients really do have conditions that have significant potential for death or disability," Dr. Sixsmith said.

In addition, the emergency room is often a "safety net" for individuals without ongoing or follow-up health care, and patients often have no previous relationship with the provider of emergency care, she said.

At the same time, care is provided in a setting that is uncontrolled and open to anyone, and it often has to be coordinated among several providers.

The five most common medical conditions leading to malpractice claims, according to Dr. Sixsmith, are:

- Misdiagnosis of headaches.
- Failure to admit for chest pain.
- Misdiagnosis of abdominal pain.
- Delay in the evaluation and treatment of a head injury.
- Failure to recognize and treat stroke.

She provided detailed examples of medical malpractice cases arising from each of the medical conditions during the session.

Taking Dr. Sixsmith's list further, Andrew Kaufman, an attorney with Kaufman, Borgeest & Ryan L.L.P. in New York, gave his top-five list of the most common situations he sees leading to medical malpractice litigation.

The No. 1 situation is a change in shift between doctors, Mr. Kaufman said. No. 2 is when patients return to the emergency room within 48 hours complaining of the same condition. No. 3 is phone calls between the emergency room physicians and the patients' private doctors. No. 4 is when patients leave before their lab work is completed. And the No. 5 situation leading to malpractice litigation is inadequate discharge instructions, Mr. Kaufman said.

Because 90% of the medical malpractice suits that arise in the ER involve patients who have been discharged, Mr. Kaufman said having systems in place, including various protocols and forms, is a good way to protect hospitals against such vulnerabilities.

In addition to focusing on customer service in the ER, Dr. Sixsmith recommends the following procedures to minimize the likelihood of litigation:

- Make the care delivery blind to the patient's insurance status.
- Have policies in place that specify the responsibilities of consultants on call to the ER.
- Allow the ER physician to admit patients to the hospital.
- Have clear change-of-shift procedures and transfer-of-care procedures.
- Ensure rapid response time for computerized axial tomography—or CAT—scans.
- Have good interinstitutional transfer agreements.
- Document consultations and discourage telephone or hallway consultations.
- Record the time of all encounters and treatments in the ER.
- Have a good documentation system that permits the rapid retrieval of past-visit patient information.

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Downloading: Schools crack down on illegal file-sharing

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The group began getting tough on music pirates earlier this year, when it filed the first of what the RIAA said could be thousands of lawsuits against individuals who have shared music files on peer-to-peer networks. No suits have been filed against colleges or universities, according to the spokesman.

Still, schools receive notices when the RIAA or other groups monitoring file-sharing find students participating in the illegal activity. And, the schools are concerned about the potential consequences of such activity.

One university official said his school is so worried about potential litigation over file-sharing that it did not want its name even mentioned in a report on the problem. All universities are vulnerable, he said, because of the hard-to-control nature of the problem and the litigious overtones that have been associated with it.

"It could be a liability," said Linda J. Rice, director of risk management at Clemson University in Clemson, S.C. "If it's copyrighted," she said of music downloaded by students, "it could be a problem if someone brought a lawsuit against the university."

Even if a university is not found liable in a suit, it would still pile up costs defending itself, Ms. Rice pointed out. She said she was not aware of coverage the school might have in place to cover such an exposure.

In many cases, illegal file-sharing is treated as more of a technology or administrative issue than a risk management problem. While university risk managers are aware of the concerns over illegal downloads, it is often the responsibility of other departments to control the exposure.

Jill Laster, associate vice chancellor for administrative services at Texas Christian University in Fort Worth, whose responsibilities include risk management, said "risk managers need to be on a first-name basis" with information technology and campus life personnel as a way to help control the downloading exposure. "It really helps when we work together," Ms. Laster said.

Campus life offices at many schools are responsible for warning and punishing student offenders.

Ms. Laster serves on TCU's information technology steering committee, which gives her a greater role in managing the risk. "I'm not sure that occurs on a lot of campuses," she said of her participation in the IT function.

Steven C. Holland, director of risk management and safety at the University of Arizona in Tucson, said those who are tackling the problem have a challenge catching offenders. "It's difficult to police," he explained, with bandwidth monitoring being the only way to identify suspicious Internet activity among students.

Downloading music files chews up a lot bandwidth. By tracking bandwidth use, systems administrators are able to pinpoint students who are using a lot of that capacity, and, possibly, illegally saving copyrighted material.

Universities are trying to discourage illegal downloads by putting tough penalties in place and educating students about the consequences of such conduct.

"We're doing what we can" to "keep a close watch" on bandwidth activity, said Kelley Bogart, senior systems analyst with the University of Arizona. When heavy bandwidth use suggests a student could be downloading or uploading music files, the suspicious activity is reported to a manager responsible for investigating. The systems support staff also has the ability to adjust the amount of bandwidth available to downloads it believes are suspicious, thereby discouraging potentially illegal activity by making it excruciatingly slow, she said.

The Arizona school and other universities are trying to discourage illegal downloads by putting tough penalties in place and educating students about the consequences of such conduct.

The University of Delaware has established a Code of the Web that requires all students to abide by a policy for "responsible computing." The policy points out that all students and school employees are bound by laws relating to copyrights and other statutes regarding electronic media.

In addition, the university requires all students to take a test covering appropriate use of the Internet that includes questions pertaining to file-sharing.

Punishment for violating the school's Web code could include loss of computing privileges, suspension or expulsion from the University of Delaware.

Ms. Laster said students who are identified by outside agencies as having downloaded copyrighted material have to sign an affidavit saying they will delete the files and uninstall software that allows such downloads. "A second violation will result in them losing access to the network during their college career," she said.

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Downloading: Cracking down on illegal file-sharing by students

PHOTO: GETTY

A New York University student downloads music using the Napster software in 2001. The Recording Industry Assn. of America has sued some individuals it claims stole music by downloading files but not paying for them.

Continued from page 32

In a new initiative, TCU now requires each offender to send an e-mail to 20 people explaining that downloading copyrighted music without paying for it is a violation of the law. "It's an educational effort," Ms. Laster explained, aimed at letting others know that they can get caught and be punished for such activity.

She said the school also is considering requiring students to take a test similar to the one required by the University of Delaware.

The RIAA spokesman praised universities' efforts to halt the illegal downloads. "We've found that they are being proactive, and that is very encouraging from our perspective," he said.

The trade group last year helped form the Joint Committee of the Higher Education and Entertainment Communities to address the illegal file-sharing issue on campuses. Made up of executives from the music and motion picture industries, as well as administrators from universities, the committee is developing resources for schools to use in educating students on copyright issues and the implications of peer-to-peer file-sharing.

The committee also is working on the development of technological methods for blocking file-sharing and is exploring how to facilitate conversations between legitimate file-sharing services and schools. It may be possible for schools to allow students to download files through a legitimate service and be charged for that service as part of their tuition, the RIAA spokesman said.

Texas Christian University now requires each offender to send an e-mail to 20 people explaining that downloading copyrighted music without paying for it is a violation of the law.

Some universities are exploring offering music downloading services to students to discourage them from illegally swapping copyrighted music files.

Pennsylvania State University earlier this month announced an arrangement under which students and faculty can use Napster 2.0, a new fee-based music downloading service. The State College, Pa.-based university will offer students free unlimited streaming and tethered downloads from a digital library of more than 500,000 songs, among other features, according to a statement from Penn State. Students would be able to purchase permanent downloads, which can be burned to CDs or transferred to portable devices, for 99 cents each, the statement noted.

Penn State will roll out the new service to campus residents in January, at the beginning of the new semester.

"This will be the first step in a new, legal approach designed to meet student interest in getting extensive digital access to music," Penn State President Graham B. Spanier said in the statement.

The university did not disclose how much it would pay to make the Napster service available to students.

Officials at other universities are expected to closely watch the Penn State experiment, with Purdue University in West Lafayette, Ind., last week indicating that it might pursue a similar arrangement.

University officials hope the music downloading services will legally satisfy demand for digital music files. But news reports about the initiatives indicate that some are skeptical that the services, which limit the distribution of songs, would replace the appeal of illegally downloading and sharing music for free.

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Obesity: Employers weigh in on worker health risks

Continued from page 4

the annual medical spending alone due to overweight and obesity is more in the range of $92.6 billion.

Employer intervention

While the statistics may be alarming, experts note that because many employers view overweight and obesity as a personal lifestyle choice rather than as a disease, they continue to shy away from intervening.

"We're still very much in the stage of helping employers understand that this is something that has to be on their radar screen," said Helen Darling, president of the Washington Business Group on Health. "I think, for the most part, human resource people and businesspeople in general feel…this is none of their business and they don't want to get involved in people's lives."

Although Ms. Darling noted that it's good for employers to be cautious about intervening in weight management, "this is not something anyone can ignore," she said.

> **'We're still very much in the stage of helping employers understand that this is something that has to be on their radar screen.'**
>
> *Helen Darling*
> *Washington Business Group on Health*

In June, the WBGH launched the Institute on the Costs and Effects of Obesity to help employer members reduce the impact of obesity and weight-related conditions in the workplace. It recently released its first "toolkit" for large employers, which details the best practices and strategies in weight management in the workplace among several employers.

Duke University in Durham, N.C., is one of the featured employers.

For the past 15 years, Duke has partnered with Johnson & Johnson Health Care Systems to manage its health and wellness program.

JJHCS' Live for Life program at Duke—whose goal is to encourage a healthy workforce—has evolved over the years from creating awareness of health and fitness issues to offering more targeted and individualized intervention today, explained Julie Joyner, senior account manager with JJHCS who manages Duke's program.

For example, Duke offers employees individualized nutrition counseling with registered dietitians and individualized fitness counseling with exercise physiologists. Employees also receive discounts to various fitness centers in the area and can participate in Duke-sponsored run/walk clubs to train for marathons and shorter-distance races, Ms. Joyner said.

To target more high-risk employees, Duke's Live for Life program offers Pathways to Change, a nine- to 12-month program in which an individual with elevated blood pressure or cholesterol is assigned a coach who is either a registered dietitian or a registered nurse, Ms. Joyner explained. "They get eight telephonic interventions and four one-on-one counseling sessions," she said, noting that the sessions are based on the stage of the employee in making a lifestyle change.

As an incentive to join the Live for Life program, employees receive "funny money" for practicing a healthy lifestyle, whether it be wearing a seat belt or eating five fruits and vegetables every day for a certain period of time, Ms. Joyner explained. Employees can spend their dollars in a special Live for Life store, where they can buy items that range from T-shirts to exercise equipment to cookbooks, Ms. Joyner said.

Duke pays the full cost of its Live for Life program—about $73 for each employee. Ms. Joyner said about half of Duke's 20,000 employees participate in at least one aspect of the program.

Although there are no statistics detailing the exact return on that investment, Ms. Joyner said employees are living healthier.

In examining 800 employees who completed a health risk assessment in 2001 and 2002, for example, the percentage of employees eating a high-fat diet declined to 5% from 7%, and the percentage of employees with high cholesterol declined to 43% from 48%, she said.

Differing approaches

Just as every employer is different, the weight management programs that are being offered today in the workplace also vary.

Whirlpool Corp., for example, relies on videotapes and discussions to promote healthier lifestyles among the 2,700 employees at its Benton Harbor, Mich.-based corporate headquarters.

Obesity "is a growing trend nationally, and it's something we wanted to get our hands on, particularly because health care costs are rising so drastically right now," said Kim Wojahn, Whirlpool's benefits program coordinator.

To this end, the appliance manufacturer began offering the Coronary Health Improvement Project, or CHIP, to employees in 2001. The

See **OBESITY**/next page

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Obesity: Employers weigh in on worker health risks

Continued from previous page

program uses a series of videotapes and discussions led by a trained nutritionist to educate people about lifestyle changes to improve their health such as low-fat diets and exercise programs, Ms. Wojahn explained. The program also offers cooking demonstrations and recipes to participating employees, which "makes it a little more special," she said.

The six-week program, offered twice a year, costs employees $300, but Whirlpool subsidizes half of it, Ms. Wojahn said.

Although Whirlpool is not privy to specific individual health outcomes due to privacy regulations under the federal Health Insurance Portability and Accountability Act, "many of our employees do share that information with us," Ms. Wojahn said. "We had an individual in his 30s…whose cholesterol level prior to starting the class was in the 700s," she said. It's now below 200. According to the American Heart Assn., a total blood cholesterol level exceeding 240 milligrams per deciliter is considered high risk.

Although the CHIP program is provided only at its corporate headquarters, Whirlpool did offer a Dump Your Plump program to all of its employees this year and plans to continue with the program in the future, Ms. Wojahn said.

Teams of up to 10 individuals from six Whirlpool divisions opted to participate in the 10-week program this year. Each team set various weight loss and exercise goals and won points based on accomplishments in meeting their goals. Whirlpool gave prizes, such as small Whirlpool appliances, coffee mugs and gift cards, to winning teams, she said.

'Things that employers can do are really of very little or at no cost.'

Dr. Wayne N. Burton
Bank One Corp.

While Whirlpool subsidizes half the cost of the CHIP program, employees pay the entire $25 to participate in Dump Your Plump.

Cost considerations

Dr. Wayne N. Burton, corporate medical director at Bank One Corp. in Chicago, noted that cost should not be an issue, though, in terms of providing various weight management programs in the workplace.

"Things that employers can do are really of very little or at no cost," he said.

The Chicago-based banking giant, for example, negotiated with its vendor to begin offering healthier selections in its corporate cafeterias.

"Clearly, it's a place where we need to and do offer healthy selections—salad bars, fruits and so forth," Dr. Burton said. "It's not to say that we don't have less-than-healthy selections, but we have healthy selections and then there's a wellness selection where employees can see the number of calories and the nutritional content of an entrée."

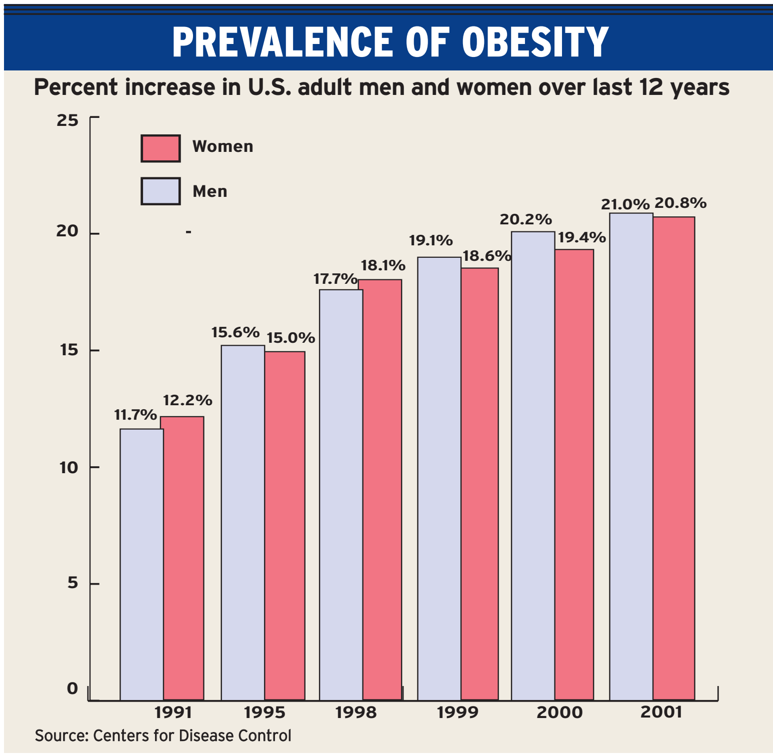
The bank also recently updated a brochure for employees that gives nutritional information about the selections commonly offered in the cafeteria, he said.

The same effort is being made in regard to Bank One's vending machines, so that employees now have the option of healthier and nonfat selections such as fruit and yogurt, he said.

In addition to offering health information via the Web, a variety of employee-pay-all weight management programs and corporate fitness centers in three of its locations, Bank One is in the midst of launching a new "10,000 steps" program.

"We started it as a pilot where employees, for $10, get a pedometer to measure their steps," he said. More than 3,000 employees signed up for the pilot. "It's been so successful that, come early next year, we're going to offer a pedometer for free for any employee who completes a health risk appraisal," he said.

"I think this is a no-brainer," Dr. Burton said of offering weight management programs. "Given the fact that 60% of the population is overweight or obese in the United States…and a large percent of our population falls within those categories, we have no other choice. We need to make this investment in helping employees achieve a healthier weight."



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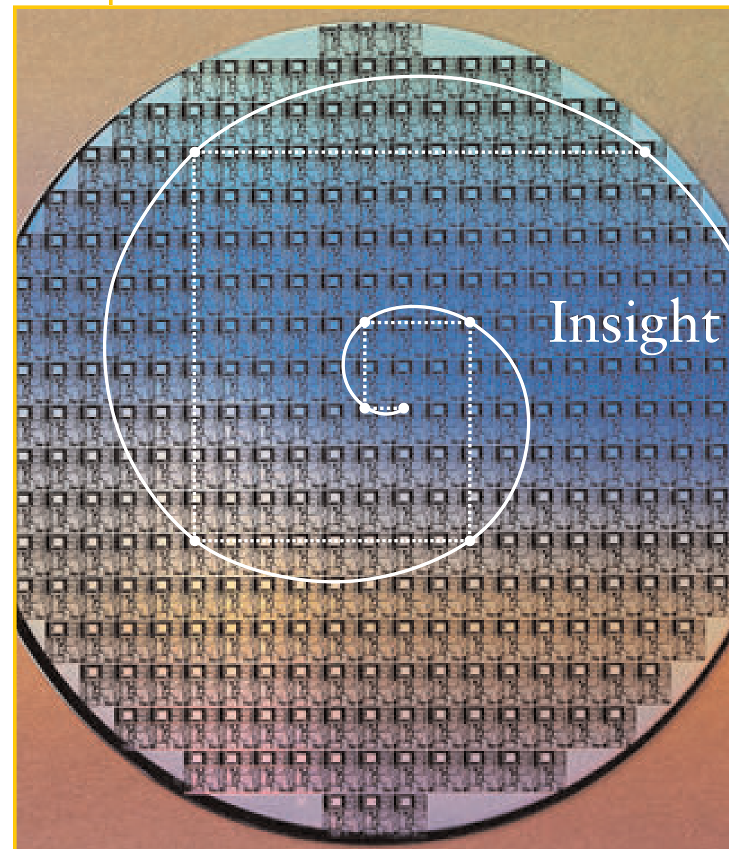

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More NY work comp use of chiropractors may cost employers

By SAMANTHA MARSHALL

NEW YORK—At Sbarro, a Manhattan-based pizza chain, total back injury claims have risen about 20% in the past two years. Ash Kilada, Sbarro's risk manager, puts much of the blame squarely on excessive chiropractic care.

"Whenever I see a chiropractor's name on a claim file, I just know it's going to cost us," he said.

Mr. Kilada, who believes in the worth of chiropractic care for some back injury cases, said the system is at fault. Because New York's workers compensation system sets no limits on the number of treatments for back injury claims, employees continue to see their chiropractors three or four times a week, long after their initial problem has been treated.

'It's beyond question that the absence of containment measures is driving up costs (in New York) more than the average.'

Stanton Long
Marsh Inc.

The liberal regulations and the growing use of chiropractors may be setting up New York employers for a sharp increase in workers comp costs. The state appears to be following in the footsteps of California, which has spent the last three years mired in a workers compensation crisis.

"It's beyond question that the absence of containment measures is driving up costs here more than the average," said Stanton Long, chairman of workers compensation at New York-based Marsh Inc.

In California, unlimited chiropractic care has contributed to medical costs that are 50% to 100% higher in workers comp claims than in private insurance claims. After businesses began leaving the state, the Legislature in September capped the number of chiropractor visits to 24 and fixed fees, moves that analysts predict will save insurers at least $4 billion (*BI*, Oct. 20).

But in New York, legislators may actually be moving in the opposite direction.

One of the controls holding costs down in New York has been the fact that per-visit fees have been fixed. But a bill introduced into the Assembly this summer, which has a good chance of passing in the next legislative session, would allow chiropractors to expand their fee schedules.

"Prices will go up fairly steeply if this law passes," warned Mr. Long.

The proposed legislation could increase medical costs to the workers comp system another $200 million and spark further premium increases, according to the Alliance of American Insurers. In 2001, employers paid total workers comp premiums of $4.27 billion, according to the New York Compensation Insurance Rating Board.

Costs have begun to rise recently in New York, where blanket cover-

See **CHIROPRACTIC**/next page

New York's workers compensation system sets no limits on the number of chiropractic treatments for back injury claims.

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Chiropractic: More use of services may cost employers

Continued from previous page

age of chiropractic care is relatively new.

Between 1997 and 2001, the latest years for which such data are available, total benefits paid to workers in New York state, including cash and cost of medical care, rose 13.7%, according to the National Academy of Social Insurance.

While the increases haven't been as dramatic in New York as in Texas, Florida and California, they are the first in almost a decade.

An increase in the use of chiropractic care is one of the biggest cost drivers here, benefits experts say. Medical costs are 17% to 21% higher in chiropractor-treated cases, according to a 2002 study by the Workers Compensation Research Institute in Cambridge, Mass.

Employees have turned to chiropractors in greater numbers since the federal government recognized the efficacy of such treatment. In 1998, the insurance equality law was passed, requiring all policies to cover chiropractic services for neck and spine injuries, and chiropractors successfully sued several major insurers two years ago for more-equitable coverage.

While many employers believe that chiropractors can keep costs down because they help employees avoid surgery, the New York workers comp system has created the perfect climate for excessive use of chiropractic services.

The 1997 Chiropractic Care Act mandated that injured workers eligible for workers compensation could receive almost unlimited chiropractic care. The employer or insurer can request an independent medical exam if the treatment drags on without improvement, but the Workers' Compensation Board, which ultimately decides disputed claims, usually gives the benefit of the doubt to the worker.

Even some chiropractors acknowledge that a workers comp system tilted in favor of the patient is wide open to abuse. Daniel Quatro, president of the New York State Chiropractic Assn., recently received a call from a New York City-based lawyer asking him to provide treatment and tests to help his client qualify for a liability claim. Mr. Quatro refused. "But I know he won't have any trouble finding a chiropractor in Manhattan who's willing to play along," he said.

Medical costs are 17% to 21% higher in chiropractor-treated cases, according to a 2002 study by the Workers Compensation Research Institute in Cambridge, Mass.

Of course, most chiropractors, who attribute orthopedic injuries to a misalignment of the spine, aren't fleecing the workers comp system. But chiropractors' beliefs can play upon the fears of injured workers nervous about returning to manual labor because the problems might flare up again.

Chiropractors have a tendency to prolong treatment with preventive care.

A chiropractor's healing hands worked wonders on Richard Sinni's pulled back muscle in 1996. After Mr. Sinni, a principal at PricewaterhouseCoopers HR Services in New York, injured himself bending over to pick up a file, he visited a chiropractor six times.

Then, after a few extra adjustments on his lower back, his chiropractor suggested some additional treatment for his neck. Mr. Sinni called a halt to the treatments.

"That raised an alarm bell for me," recalls Mr. Sinni. "I didn't have a problem with my upper back, so I questioned it."

Samantha Marshall is a reporter for Crain's New York Business, a sister publication of Business Insurance.

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Comings & Goings

Agents/brokers

Willis Group Holdings Ltd. has made two senior-level appointments in its St. Louis office:

- **Kenneth W. Burnham** has been promoted to chief operating officer. Previously, Mr. Burnham was executive vp and construction group leader.
- **James M. Ringland Jr.** has been promoted to employee benefits practice leader. Before his promotion, Mr. Ringland was a vp.

Maxim Insurance Group, a Tampa, Fla.-based workers compensation specialty wholesale brokerage, has made two senior-level appointments:

- **E. Scott Carde** has been appointed president and chief executive officer. Before joining Maxim, Mr. Carde was a senior vp with AlphaStar Insurance Group.
- **Nick Carter** has been named senior vp and chief financial officer. Previously, Mr. Carter was vp and risk manager for AlphaStar.

Gregory L. Gates has been appointed president of The Mahoney Group, an agency based in Casa Grande, Ariz. Before joining Mahoney, Mr. Gates was executive vp of The Talbot Agency.

Reinsurance

Joseph P. Stanoch has been named senior vp of Burns & Wilcox Re Inc. Before joining the Upper Saddle River, N.J.-based reinsurance brokerage, Mr. Stanoch served as a senior vp with Towers Perrin Reinsurance.

GE Employers Reinsurance Corp. has named **Don Mango** as director of research and development. Before joining Overland Park, Kan.-based ERC, Mr. Mango was employed at American Re-Insurance Co., where he led actuarial research and development and portfolio analysis.

Mr. Mango

New York-based Willis Re Inc. has appointed **Timothy J. Brophy** as senior vp in its Atlanta office. Previously, Mr. Brophy was second vp and treaty marketing representative at ERC.

Other suppliers

Atlanta-based Cypress Care, a workers compensation prescription benefit manager, has appointed **Michael S. Hernandez** as senior vp of business development. Before joining Cypress Care, Mr. Hernandez was vp of national accounts at Concentra Inc.

David Homcy has been named senior vp and branch manager for the Southeast region for ACE Risk Management, a division of ACE USA. Mr. Homcy, who previously was assistant vp and eastern zone manager for AIG Risk Management, will be based in the company's Roswell, Ga., office.

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Commentary

The passing of a Chicago original

I suspect the name Irv Kupcinet might not mean a lot to many people in other parts of the country, but last week, in Chicago, it was hard to pick up a paper or turn on the TV without seeing or hearing stories about Kup.

Which is as it should be, I think, for someone who came to be woven so tightly into the fabric of the city for so long.

For those unacquainted with him, Mr. Kupcinet, who passed away last Monday at 91, was a columnist for the Chicago Sun-Times. More than that, he'd become something of a mythic figure in Chicago.

His column had been featured in the Sun-Times since 1948, and before that, Kup, who played briefly for the National Football League's Philadelphia Eagles, was a sportswriter for the old Chicago Times.

The column was mostly celebrity stuff, and something that, as a regular Chicago Tribune reader, I wouldn't see every day. Even when I did read the Sun-Times, I might skip over Kup's Column. Still, like other Chicagoans, I knew it was there, day after day, and it seemed sort of an essential part of the city.

In its way, I suppose Kup's Column was kind of like the old Water Tower or the Wrigley Building, landmarks I first gawked at as a kid on family trips downtown. Today, I might not notice them each morning on the way to the office, but they provide a comforting sense of consistency when I do.

Really, his column was just one point of a Chicagoan's contact with Kup. Some of those eulogizing him in the past week have called him "Mr. Chicago," and if just for the sheer number of ways he connected with the city, one could make a good case for the title.

Growing up in northwest Indiana, within Chicago's sphere of media influence, I confronted Kup's presence time and again.

I've always been a pretty big Chicago Bears fan, and Bears games might have provided my first exposure to Kup. Teamed with another late Chicago media legend, sportscaster Jack Brickhouse, he did Bears radio broadcasts for nearly a quarter of a century. When I was a kid, with home games not televised, my dad and I spent many an hour listening to Kup and Jack calling Bears games.

Kup had a spot elsewhere in Bears lore as well. Though it was well before my time, any true Bears fan knows he worked as an official in the team's legendary 73-0 thrashing of the Washington Redskins in the 1940 NFL championship game.

My favorite Kup memory from my youth was discovering "Kup's Show," a weekly show focused on "the lively art of conversation." I'm fairly certain that as a kid I didn't understand all the issues being discussed–philosophy, politics, theater, whatever. Instead, I think it was the sheer dynamics of the conversations, "the lively art," indeed, that drew me back to it week after week.

Rodd Zolkos

I hadn't seen anything like it before and certainly haven't since. On one program, Kup might assemble a group such as Muhammad Ali, Truman Capote, Linus Pauling and Joey Heatherton. The next week, it might be Norman Mailer, Gloria Steinem, Woody Hayes and Morey Amsterdam. In its later years, the show was limited to an hour, but early on it would come on late at night and run as long as the conversation continued. Amazing.

I never actually met Kup, though I had a few chances. The best probably came once during intermission at some play or another, when I found myself standing beside him in the lobby. Ultimately, I decided not to bother him. Truth be told, I think I found myself tongue-tied and unable to figure out where to start.

Had I known I was going to have the close encounter, maybe I would come equipped with my copy of Kup's out-of-print 1962 book "Kup's Chicago." That treasure, discovered in a neighborhood used bookstore, would have been a natural icebreaker.

So what's the connection between Kup's passing and risk management? None, probably, though there may be some merit in keeping in mind his show model.

In wrestling with a complex issue, there can be real benefit in bringing together a diverse, and even unlikely, group of opinions. Differing opinions can be useful in getting to the heart of a matter, and from time to time the best observations can come from someone without the baggage of "expertise" on a particular subject.

And, even if the conversation doesn't produce a definitive answer, sometimes "the lively art" itself is its own reward.

Senior Editor Rodd Zolkos can be reached at rzolkos@crain.com.

Letters to the Editor

Continued from page 8

tion on each RRG that goes far beyond that currently being provided, for a considerable price, by the Risk Retention Group Directory & Guide, 2003. That publication does provide "selected statistical data," yet it does not include written premium, earned premium, unearned premium, loss ratios, expense ratios, paid losses, and loss adjustment expenses, underwriting profit or loss, net investment income, other gains or losses, federal taxes incurred and dividends declared. The information it does provide is generally useless and made the more so when it is listed as "not available" when it certainly should be. (The directory does indicate that National Warranty writes 12.9 times as much premium in 2002 as had surplus as regards policyholders.)

If those providing a fair review do nothing else, I hope they will insist that this and other pertinent information, readily and inexpensively available on every licensed insurance company chartered in one of the United States, be published quarterly on each risk retention group, and no less than annually on all of them in one summarizing document that provides plentiful historical data. Without such information, a fair review of this experiment is impossible.

While the subject of insolvencies remains troubling, such a review need not dwell only upon that aspect of the history of risk retention groups. It should also explore why more than 50% of the RRGs formed are no longer active and what impact this has had upon the public and the various third parties more directly affected by the reinsurance transaction. In other words, how are the entities that depended on the continued existence of these RRGs impacted by their withdrawal from the marketplace? Did certificate holders or their insurers pay losses they would not have otherwise paid?

Charles A. McAlear
New Orleans

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To improve quality, you need the data

To the editor: I found Chris Mandel's Oct. 13 response to my Aug. 11 letter entertaining and would like to respond.

While Mr. Mandel certainly has a strong opinion on the matter of risk managers and quality, these are but opinions and not facts supported by any data. The term "quality" means a lot of different things to a lot of different people. The fundamental disciplines of achieving quality are not schemes or buzzwords; rather, they are knowledge grounded in statistics, systemic thinking, understanding variation, the theory of chaos and psychology.

His opinion about my background is also incorrect. I am not an academic but have certainly spent significant time with leading-edge thinkers and teachers. It is the quality of thinking that begets quality results. It is not opinions or fads. And, most importantly, quality is a result of using knowledge to create change that brings measured improvement.

Of course, without any data to support claims of improvement, we're left with an opinion. The Quality Insurance Congress was the first-ever initiative to collect the data—facts—and use them for improvement. It was shut down because the data spoke for themselves and no one wanted to do the hard work required to fix that which the data said needed to be fixed.

Who today in the insurance business has accurate data that show improvement within industry processes or data that show the customers—not just one—are satisfied with the quality of service? If someone has such data, please publish them so we can deal with the facts and I can fix the quality of my own thinking.

Jay Deragon
Chairman
XSVoice Inc.
Alerts USA L.L.C.
Nashville, Tenn.

Business Insurance welcomes letters to the editor. The section is intended to be a forum for readers' opinions and comments.

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Downgrade adds to SCOR woes

Rights issue unlikely to change rating to A level, which could hamper renewals

By SARAH VEYSEY

PARIS—French reinsurer SCOR S.A. has suffered another setback in its turnaround plans after being downgraded by a major rating agency following publication of a 349 million euro ($401.4 million) loss for the first nine months of 2003.

And despite the Paris-based reinsurer's plans to raise an additional 600 million euros ($690 million) in capital, rating agencies say it is unlikely to obtain a rating in the A range in time for year-end renewals.

At its current level of ratings, SCOR could lose a significant amount of business at year-end.

SCOR blamed its nine-month loss largely on a 241 million euros ($277.2 million) reserve boost for business, including workers compensation, written in the United

States between 1997 and 2001.

To improve its capital position, SCOR announced plans to launch a rights issue and stated that it has already received commitments from several large shareholders to support the share issue.

In addition, SCOR scrapped plans to open its life reinsurance operations to outside investment and said, instead, that its life arm would be spun off into a separate subsidiary but remain wholly owned by SCOR.

The life reinsurance business is profitable, said SCOR Chairman Denis Kessler, and offers received for it were inadequate.

The reinsurer is also making slower-than-expected progress in its efforts to commute the book of business of its Bermuda-based alternative risk transfer operation, Commercial Risk Partners. Reserves for that operation—which ceased to accept new business at the start of this year—were increased by a further 49 million euros ($56.4 million) at Sept. 30, 2003.

Following the publication of SCOR's results, rating agency Standard & Poor's Corp. downgraded the reinsurer to BBB- from BBB+. Earlier this year, S&P downgraded SCOR to BBB+ from A-.

And even if the rights issue is successful, the extra capital will likely only return SCOR to a rating of BBB+, according to S&P.

"As things currently stand, based upon the information presented to us and the marketplace, we have ruled out the A-range in the next movement on this (rating). The best is no higher than BBB+," said Marcus Rivaldi, a credit analyst at S&P in London.

See SCOR/page 43

HLF loses CEO, opts for capital restructuring to remain independent

By SARAH VEYSEY

LONDON—David Margrett has stepped down as chief executive of HLF Group P.L.C., and the London-based broker is planning a reorganization designed to allow it to remain independent, HLF said last week.

Mr. Margrett

HLF Chairman Ian Martin has assumed the role of executive chairman of the group with immediate effect, according to an HLF statement.

Mr. Margrett had been chief executive of the group since it was created by the December 1999 merger of London-based brokers Heath Group P.L.C. and Lambert Fenchurch Group P.L.C.

Mr. Martin said that the brokerage is conducting a business plan and financial review in conjunction with its advisers, PricewaterhouseCoopers L.L.P., and that a restructuring of HLF's capital and stakeholders would be announced in the coming weeks.

Such moves, Mr. Martin said, would enable the company to remain independent.

"The major piece that we are all pleased about is that we are looking forward to an independent future," he said.

HLF has been the subject of takeover rumors since it scrapped a planned initial public offering on the London Stock Exchange in July 2002, citing "turbulent" market conditions (*BI*, July 22, 2002). Mr. Martin said that the restructuring would end such speculation and would boost morale among staff and confidence among customers.

The broker is currently backed by a group of investment funds including Candover Partners Ltd., Advent Capital Management L.L.C. and Phoenix Equity Partners.

Mr. Martin would not comment on what form the capital restructuring would take. But he said the changes would give the group the "financial maneuverability to move forward."

Mr. Martin is chairman of London-based health care company SSL International P.L.C. He was formerly chairman of London-based food and distribution company Unigate P.L.C.

In other appointments, Adrian Colosso, currently head of global broking and production, will become managing director of HLF's U.K. operations. Mike Bruce, U.K. chief operating officer, and Surinder Beerh, managing director for overseas, will assume greater responsibility for the day-to-day running of the business, the statement said.

Aussie med mal insurer returns to profit

UMP allowed to exit liquidation

By ELIZABETH FRY

SYDNEY, Australia—Australia's largest medical professional liability insurer, United Medical Protection Ltd., can exit provisional liquidation and resume its normal operations, a court has ruled.

The decision comes 18 months after UMP, which insures about 60% of the country's doctors, was placed in provisional liquidation with an estimated $460 million Australian ($326.6 million) in unfunded incurred-but-not-reported liabilities.

The April 2002 provisional liquidation order threw the medical liability insurance industry into turmoil, which led to threats by doctors to stage a massive walkout from Australia's hospitals to protest a proposed government levy on doctors to recoup the funds the government had earmarked to cover UMP liabilities. Last month the government postponed its plans to impose the special levy until Dec. 10 (*BI*, Oct. 13).

The ruling by the New South Wales Supreme Court that the UMP group of companies could exit provisional liquidation on Nov. 14 was welcomed by doctors.

"Had UMP gone belly up, it would have been disastrous," said Dr. Mukesh Haikerwal, vp of the Australian Medical Assn. in Canberra.

The decision to allow UMP to resume its operations stems, in large part, from the government's commitment to take on the insurer's existing IBNR liabilities, said David Lomb, the provisional liquidator, who is a corporate reorganization partner with Deloitte Touche Tohmatsu in Sydney.

The government bailout enabled UMP to remain a going concern and continue to renew its policies. In the 12 months to June 30, 2003, it had net assets of $79 million Australian ($56.1 million) and net liabilities of $1.2 million Australian ($852,000). The turnaround in the asset position was largely achieved through a reduction in claims liabilities, the resolution of tax issues and a change in the basis of valuation of the assets from "closed down" to "going concern," Mr. Lomb said.

The insurer was also able to return to profit. For the year to June 30, 2003, UMP reported a pretax profit of $57.6 million Australian ($40.9 million), compared with a pretax loss of $89 million ($63.2 million) in the year-earlier period.

Mr. Lomb also said that none of the three deeds of indemnity that were negotiated with the government, which enabled UMP to continue trading during provisional liquidation, was drawn upon. The three deeds, between the government and the provisional liquidator, guaranteed that the government would pay any amount of liability, in excess of premium income.

The agreements, which related to three different periods over the time of the provisional liquidation, allowed the provisional liquidator to write policies for doctors. This guarantee was over and above the $460 million that was wiped off UMP's balance sheet when the government assumed the liabilities.

In addition, Mr. Lomb said he was able to negotiate an affordable reinsurance program for UMP with European reinsurers. A confidentiality agreement prohibits UMP from disclosing the names of the reinsurers, he said.

Looking forward, Mr. Lomb told the court that the net present value of all UMP's future claims is about $45 million Australian ($32 million) and, on that basis, UMP should have sufficient funds to pay all claims.

World Updates

Goshawk makes changes at the top

Goshawk Insurance Holdings P.L.C. has made several management changes as part of an operational review. Group Chief Executive Chris Fagan has stepped down, the company said. London-based Goshawk said that, following the decision to put the company's Lloyd's of London syndicate 102 into runoff (*BI*, Nov. 3), there was no longer a role for Mr. Fagan. Andrew Castell, the group's finance director, will stay in that post and oversee day-to-day management of the London operations.

Alexander Forbes' revenues decline

Alexander Forbes Ltd. has announced a 9% decline in revenues, to 2.22 billion rand ($319.0 million), for the six months ending Sept. 30. A spokeswoman for the Johannesburg, South Africa-based brokerage said that a fall in the average exchange rate used to convert the British pound-denominated performance of its international operations into rand was a major factor behind the fall in revenues. Aftertax profits for the first half of Alexander Forbes' fiscal year dropped 38.4%, to 205 million rand ($29.5 million).

Catlin Insurance seeks U.K. branch

Catlin Insurance Co. Ltd. of Bermuda has applied for approval to establish a U.K. branch office. Catlin said in a statement that it is seeking approval from the Financial Services Authority to open an office that would write specialty insurance and reinsurance starting Jan. 1, 2004. Catlin said that while much of the business written by the new office would be written in parallel with parent Catlin Group Ltd.'s Lloyd's syndicate, the branch would write 100% of some classes of business on a stand-alone basis.

Maersk to meet pension obligations

The Maersk Co. Ltd. said it plans to meet the full obligations of a U.K. subsidiary's terminated pension plan. Last year, Maersk announced it would wind up the Sea-Land Services Inc. defined benefit plan, which was underfunded by £3.5 million ($5.4 million). At that time, U.K. law allowed solvent companies to wind up underfunded pension plans. But in June, the U.K. government changed pension law to require solvent companies to meet all pension obligations before terminating a plan. While the new law would not apply to the Sea-Land termination, Maersk said that it "believes that ensuring all members receive their full pension entitlements is now the right thing to do."

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PETITION OF DAN YORAM SCHWARZMANN AND DOUGLAS NIGEL RACKHAM, AS JOINT PROVISIONAL LIQUIDATORS OF BLACK SEA AND BALTIC GENERAL INSURANCE COMPANY LIMITED
CASE NO. 98-B-46759 (CB)

Notice is hereby given that pursuant to an order of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") dated November 4, 2003, a hearing will be held on December 17, 2003 at 2:00 p.m., before the Honorable Cornelius Blackshear in the Bankruptcy Court, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004 to consider the motion of Dan Yoram Schwarzmann and Douglas Nigel Rackham, as joint provisional liquidators (the "Provisional Liquidators") of Black Sea and Baltic General Insurance Company Limited (the "Company") for a permanent injunction and order pursuant to 11 U.S.C. § 304, inter alia:

1. Giving the Scheme of Arrangement full force and effect in the United States and making the Scheme of Arrangement binding on and enforceable against all Scheme Creditors in the United States;

2. Permanently enjoining all persons and entities from: (a) taking any action in contravention of, or inconsistent with, the Scheme of Arrangement; (b) seizing, repossessing, transferring, relinquishing or disposing of any property of the Company in the United States, or the proceeds thereof, to any person or entity other than the Scheme Administrators; (c) commencing or continuing any action or other legal proceedings (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) against the Company or any of its property or any proceeds, except as provided in the Scheme of Arrangement; (d) enforcing any judicial, administrative or regulatory judgment, assessment or order or arbitration award and commencing or continuing any act for any action or other legal proceeding (including, without limitation, arbitration or any judicial, quasi-judicial, administrative or regulatory action, proceeding or process whatsoever) or any counterclaim to create, perfect or enforce any lien, set-off or other claim against the Company or its property or any proceeds thereof, including, without limitation, rights under reinsurance or retrocession contracts, except as expressly permitted in the Scheme of Arrangement; (e) drawing down any letter of credit established by, on behalf or at the request of, the Company, in excess of amounts expressly authorized by the terms of the contract or other agreement pursuant to which such letter of credit has been established; except, however, no drawing against any letter of credit shall be made in connection with any commutation unless the amount has been agreed in writing with the Scheme Administrators or by further order of the United States Bankruptcy Court; (f) withdrawing from, setting off against, or otherwise applying property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest in excess of amounts expressly authorized by the terms of the contract and any related trust or other agreement pursuant to which such letter of credit, trust, escrow, or similar arrangement has been established; (g) commencing or continuing any action or other legal proceeding against the Company, the Provisional Liquidators, the members of the Informal Creditors' Committee, or their respective directors, officers or agents, employees, representatives, financial advisors or attorneys (the "Pre-Scheme Parties"), or any of them, with respect to any claim or cause of action, in law or in equity, arising out of or relating to any action taken or omitted to be taken as of the effective date of the Scheme of Arrangement by any of the Pre-Scheme Parties in connection with the provisional liquidation proceedings, the section 304 proceeding or in preparing, disseminating, applying for or implementing the Scheme of Arrangement or this Order; and (h) commencing or continuing any action or other legal proceeding against the Company, the Scheme Administrators, the members of the Creditors' Committee, or their respective directors, officers, agents, employees, representatives, financial advisors or attorneys (the "Scheme Parties"), or any of them, with respect to any claim or cause of action, in law or in equity, arising out of or relating to the construction or interpretation of the Scheme of Arrangement or any action taken or omitted to be taken by any of the Scheme Parties in connection with the provisional liquidation proceedings or the administration of the Scheme of Arrangement;

3. Requiring all persons and entities in possession, custody or control of property of the Company in the United States, or the proceeds thereof, to turn over and account for such property or its proceeds to the Scheme Administrators; and

4. Requiring all persons and entities that are beneficiaries of letters of credit established by, on behalf or at the request of, the Company or parties to any trust, escrow or similar arrangement in which the Company has an interest, will be required to: (a) provide notice to the Scheme Administrators of any drawdown on any letter of credit established by, on behalf or at the request of, the Company, or any withdrawal from, set-off against, or other application of property that is the subject of any trust or escrow agreement or similar arrangement in which the Company has an interest, together with information sufficient to permit the Scheme Administrators to assess the propriety of such drawdown, withdrawal, set-off or other application, including, without limitation, the date and amount of such drawdown, withdrawal, set-off or other application and a copy of any contract, related trust or other agreement pursuant to which any such drawdown, withdrawal, set-off, or other application was made, and provide such notice and other information contemporaneously therewith; and (b) turn over and account to the Scheme Administrators for all funds resulting from such drawdown, withdrawal, set-off, or other application in excess of amounts expressly authorized by the terms of the contract, any related trust or other agreement pursuant to which such letter of credit, trust, escrow or similar arrangement has been established.

PLEASE TAKE FURTHER NOTICE that any and all objections and responses to the Motion shall be made in writing, shall conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York, shall set forth the name of the objecting party, the basis for the objection and the specific grounds therefore, and shall be filed with the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, with a copy to the Chambers of the Honorable Cornelius Blackshear, United States Bankruptcy Judge, and served so as to be received by counsel to the Provisional Liquidators at the address set forth below (Attn: Howard Seife, Esq.) on or before December 8, 2003 at 5:00 p.m. New York time.

A copy of the Scheme of Arrangement is available at http://www.blacksea.co.uk or upon written request to the undersigned counsel:

Chadbourne & Parke LLP
Attorneys for the Provisional Liquidators
30 Rockefeller Plaza
New York, New York 10112
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Attn: Howard Seife, Esq.
Francisco Vazquez, Esq.

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LEGAL NOTICE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re ARIG INSURANCE COMPANY LIMITED, Debtor in a Foreign Proceeding	In a Proceeding under Section 304 of the Bankruptcy Code Case No. 03-17057 (SMB)

NOTICE OF PETITION AND MOTION FOR PERMANENT INJUNCTION AND ORDER PURSUANT TO SECTIONS 105(a) AND 304(b) OF THE BANKRUPTCY CODE AND RELATED HEARING

PLEASE TAKE NOTICE that a petition ancillary to a foreign proceeding, pursuant to 11 U.S.C. § 304, and the Petition and Motion for Permanent Injunction and Order Pursuant to Sections 105(a) and 304 of the Bankruptcy Code (the "Petition and Motion") were filed on November 7, 2003 in the United States Bankruptcy Court for the Southern District of New York.

PLEASE TAKE NOTICE that, among other things, the Petition and Motion seek the entry of an order giving full force and effect in the United States to the Scheme of Arrangement (the "Scheme") pursuant to section 425 of the Companies Act 1985 of Arig Insurance Company Limited ("Arig"), which Scheme was sanctioned by the High Court of Justice of England and Wales by order dated September 30, 2003.

PLEASE TAKE NOTICE that the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has scheduled a hearing with respect to the Petition and Motion for 10:00 a.m. on December 9, 2003.

Copies of the Scheme and the related Explanatory Statement, the Summons, the Petition and Motion, and the form of the Order requested are available to parties in interest on the Bankruptcy Court's Electronic Case Filing System, which can be accessed from the Bankruptcy Court's website at http://www.nysb.uscourts.gov (a PACER login and a password are required to retrieve a document) or upon written request to the Petitioners' counsel (including by facsimile or email) addressed to:

Clifford Chance US LLP
200 Park Avenue
New York, New York 10166
(212) 878-8375 (Facsimile)
Attention: David A. Sullivan
david.sullivan@cliffordchance.com

PLEASE TAKE FURTHER NOTICE that answers or objections to the Petition and Motion must be made in writing describing the basis therefor and must be filed with the Court electronically in accordance with General Order M-182 by registered users of the Court's electronic case filing system, and by all other parties in interest, on a 3.5 inch disc, preferably in Portable Document Format (PDF), Word Perfect or any other Windows-based word processing format, with hard copy to the Chambers of the Honorable Stuart M. Bernstein, and served upon Clifford Chance US LLP, at the address below (Attention: Madlyn Gleich Primoff), counsel to the Petitioners, so as to be received on or before December 5, 2003 at 12:00 p.m., New York time.

The hearing with respect to the relief requested in the Petition and Motion may be adjourned from time to time without further notice other than an announcement in open court of the adjourned date or dates at the hearing or any further adjourned hearing.

Dated: New York, New York
November 10, 2003

CLIFFORD CHANCE US LLP
200 Park Avenue
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(212) 878-8000
Attorneys for the Petitioners
Attention: Madlyn Gleich Primoff, Esq.
David A. Sullivan, Esq.

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Hawaii: Coordinating vendors is vital

Continued from page 4

uate vendors' turnaround time for providing MedAmerica with information.

The accuracy and speed of that information is necessary so MedAmerica can meet its policyholders' needs, Ms. Everett said. MedAmerica was created to insure emergency physicians and their medical groups. They regularly need up-to-date insurance documentation to practice in various hospitals.

"We frequently get calls from our insureds that say, 'I am starting a shift in about two hours. It's a new site, and I'm covering for someone else and I need all my documents sent to the credentialing department,'" Ms. Everett said.

When selecting a captive manager, one must consider potential long-term uses for the facility, advised Wanda Jong, senior vp in Honolulu for Becher+Carlson Risk Management Inc. Captives often launch with a simple structure but later change and require broader management expertise than the original manager can provide, she noted.

Captive managers don't necessarily need to know a client's industry, but they should have expertise in the type of captive they will manage, Ms. Jong said.

"If you have a group captive and this person has only managed pure captives before, they may not necessarily have the expertise to manage group captives," she said.

Also, don't assume vendors will coordinate and share information on behalf of a shared client, Ms. Jong said. Always confirm the tasks they are assigned and follow up to make sure they are being carried out.

"It's not hard to send an e-mail to everyone to say, 'Just making sure we are on target for completion of the audit,' and if someone comes back and says, 'What audit?' then you know you are in trouble," Ms. Jong said.

Think of vendors' information needs to ensure they excel at their specialty, the panelists advised.

Managers should be told, sometimes in advance, of captive business plan changes, board member changes, investment changes and other moves. If not properly managed, some changes could bring unwanted action from regulators, Ms. Jong said.

John Herzfeld, a consulting actuary for Milliman USA in Wakefield, Mass., stressed that actuaries need more than just raw data to effectively serve the needs of captive owners.

To evaluate claims activity, for example, Milliman needs more than just the volume and value of losses, he said. Producing quality reports requires additional information, such as the claims manager's approach to losses, whether there are states or regions in which claims are more likely and specific details on individual large losses, he said.

"This is all the kind of information that is crucial to get from claims people," Mr. Herzfeld said. "Otherwise, we are just looking at numbers and can't do as good a job as we need to."

Claims managers and loss control vendors should have expertise in the specific lines of coverage provided by a captive, said Bill Rush, vp for RiskCap Inc. in Denver. Having multiline experience is best in case the captive adds other lines of coverage.

Contracts with third-party administrators should call for performance guarantees with standards that are measurable and fair, Mr. Rush said. Contracts should require annual performance audits and contain a 60- to 90-day cancellation option. That way, the captive owner has leverage and can walk away if the TPA's service proves inadequate.

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SCOR: Downgrade adds to woes

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While S&P has been cautious for some time about SCOR's reserving issues, the results announced on Nov. 6 were worse than the agency's expectations, he said.

Mr. Rivaldi said that S&P had been "expecting to hear some good news with regards to a potential sale of SCOR's life reinsurance operation."

"We were also hoping to see, come these results, further progress with regard to commutations at Commercial Risk," he said.

Mr. Rivaldi said that SCOR was seeking to resolve its other problems—namely U.S. business written between 1997 and 2001—but "the other key issue is the resilience of SCOR's business position and retaining the support of their cedents and brokers."

In the wake of SCOR's results announcement, A. M. Best Co. changed the "under review" status on its B++ rating of SCOR to "negative" from "developing."

Jose Sanchez-Crespo, an analyst at Best in London, said that if SCOR were successful in raising the 600 million euros envisaged by its rights issue, about half of that would go to cover existing losses. Failure to raise that cash would likely result in a ratings downgrade, he said, though "there is no reason to doubt their ability to raise this money." But SCOR's shareholders "do not have unlimited pockets," Mr. Sanchez-Crespo noted, and the company's ability to continue to raise capital via share issues will likely be constrained in the future, especially since SCOR's last rights issue was only a year ago (*BI*, Jan. 6).

According to a London-based broker who did not want to named, SCOR will likely lose a significant amount of business at the Jan. 1 renewal with its current BBB- rating from S&P and B++ rating from Best.

SCOR is already at the bottom level of what most companies are prepared to accept. "There may be some anti-selection," he said.

"SCOR is not on the brink of insolvency," said the broker, "but what they have is a shortage of capital to support underwriting going forward."

While he would not comment specifically on SCOR, Callum Stewart, managing director of nonmarine reinsurance at London-based broker HLF Group P.L.C., said that reinsurers face problems if they are have ratings only in the B-range.

Mr. Stewart also noted that the introduction of cancellation, or "sudden death," clauses, whereby a cedent could cancel a contract if a reinsurer's rating were to drop below a certain level, were becoming more common.

And speaking to a seminar of clients in London Friday, John Lloyd, partner in the risk solutions division of London-based broker Jardine Lloyd Thompson Group P.L.C., said that many insurers were now reluctant to purchase reinsurance from companies rated lower than A, or to place business with reinsurers with lower credit ratings than their own because of concerns over counterparty risk.

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Hawaii Captive Insurance Council Forum

Captives also must comply with governance rules

By ROBERTO CENICEROS

POIPU, Hawaii—In light of the growing attention to corporate governance, captive parents should take a close look at their operations to make sure they comply with both internal and external rules, experts say.

Several high-profile corporate accounting scandals in recent years have prompted much greater scrutiny of business operations by regulators and the public, said Clyde Mark, director of risk management for Kamehameha Schools in Honolulu.

It remains uncertain where the heightened scrutiny will end, but it could have an impact on captive operations, Mr. Mark told attendees at the Hawaii Captive Insurance Council's forum, held earlier this month in Poipu, Hawaii. To avoid that, he said, risk managers might need to pay greater attention to their captive's financial accounting than they have in the past.

Indeed, risk managers should spend more time reviewing income statements, evaluating the captive's regulatory compliance and following the recommendations of external auditors, Mr. Mark suggested.

They also should ensure that changes in assets are appropriate and that the captive operations follow company bylaws, advised Mr. Mark, who is chairman and president of P&C Insurance Co., a Honolulu-based captive.

"Look at your articles of incorporation," he said. "Look at how you run your captive. Because sometimes you might be in violation of what your corporate governance has already established."

That could be a red flag for regulators, Mr. Mark said.

Captive owners seeking to avoid problems often ask how to apply the corporate governance and accounting reforms contained in the Sarbanes-Oxley Act passed by Congress in 2002, speakers at the forum said.

> **In the wake of the Sarbanes-Oxley Act, 'you will find the captive will become more and more part of the process of analysis of the parent company.'**
>
> *Paul Obolensky*
> *American International Group Inc.*

The reforms apply only to publicly traded entities, according to several captive experts. They do not apply to privately held companies or other types of operations and, thus, may not strictly apply to all captive operations.

But the speakers said that even if a captive is not part of a publicly traded entity, using Sarbanes-Oxley standards as a benchmark can help avoid problems and negative publicity.

Among other measures, the reform act requires greater accounting oversight, corporate governance and responsibility standards; increased financial disclosure; and the strict independence of auditors.

But captive owners concerned about Sarbanes-Oxley compliance should take care not to overregulate, said Paul Obolensky, president of American International Group Inc.'s captive management and business development divisions.

Given the pressures of Sarbanes-Oxley, captives are receiving more scrutiny from their parent companies, auditors and upper management, Mr. Obolensky said. Corporate board members are asking about captive operations, and chief financial officers are getting involved to determine the level of oversight for their captives.

"Nine times out of 10, I suspect what will happen is that, irrespective of what the captive does internally, or extra regulation, the parent company will be visiting the captive," Mr. Obolensky said. "You will find the captive will become more and more part of the process of analysis of the parent company."

But although publicly traded companies must have independent audit committees, it may not be necessary for a captive unit to have its own independent audit committee, Mr. Obolensky said.

An independent audit committee for captives is "perhaps going too far," Mr. Obolensky said. As long as the parent company has an audit committee and the captive is in compliance with the parent's accounting principles, the captive may not need its own committee.

"You don't want to overregulate or overcomplicate the effort," Mr. Obolensky said. "Overregulation can lead to stifling of innovation."

Currently, some captives have audit committees and some do not, said Gerald Yoshida, a partner at Char Hamilton & Thom in Honolulu. One of the audit committee's key purposes is to take an independent look at the captive's financial statements.

The need for such a committee can depend on the sophistication of a captive's board of directors and the board's size, said Mr. Yoshida, who also is chairman and director of the HCIC, a Honolulu-based trade organization.

If the board members have a strong understanding of the captive's operations and are involved in its day-to-day operations, there may be less need for an independent audit committee, Mr. Yoshida said.

The complexity of the captive's insurance program may also be a factor.

It is important, though, that captive owners conduct their due diligence and review whether or not their captive needs an independent audit committee, Mr. Yoshida said.

Hawaii Captive Insurance Council Forum

Communication clears path to funding benefits in captive

By ROBERTO CENICEROS

POIPU, Hawaii—To successfully reinsure group life benefits through its captive, Archer Daniels Midland Co.'s risk management department first had to win over the human resources department.

In May, the Department of Labor gave Decatur, Ill.-based ADM final approval to use its Vermont-based facility to reinsure life insurance policies for salaried and hourly employees. Previously, the Labor Department approved a similar plan by Columbia Energy Group to reinsure long-term disability coverage through the Vermont branch of its Bermuda-domiciled captive, and, earlier this month, the department gave final approval to International Paper Co. to fund life insurance risks through that company's Vermont captive.

Most companies attempting to place benefits coverage in captives will still encounter resistance and fears that the risk management department is intruding on the benefit department's turf, said Michael Lusk, corporate vp-insurance and risk management at ADM.

To address the issue, focus on the financial benefits that the company and its employees stand to derive, Mr. Lusk advised the Hawaii Captive Insurance Council. He spoke at the HCIC's Biennial Forum as part of a panel that addressed innovative uses for captives.

Mr. Lusk won the trust of ADM's human resource department by including its leader on a team that evaluated the potential gains from placing benefits in the company's captive.

"One of the things we tried to do was to get the person in charge of human resources, which is responsible for benefits within our corporation, and myself to make sure that there were no conflicts," Mr. Lusk said. He said he made sure "that there wasn't anything they felt I was trying to take away from them."

Mr. Lusk is often asked whether ADM really stands to save significant dollars by using the captive to reinsure benefit risks.

To answer that question, he displayed a chart indicating potential savings estimates.

> **ADM's risk manager won the trust of the human resources department by including its leader on a team that evaluated the potential gains from placing benefits in the company's captive.**

The chart illustrates 2002 data complied by consultant Towers Perrin. It shows that employers stand to shave 5% to 15% off the cost of insured benefits by placing long-term disability benefits in captives. Similarly, an employer could save 10% to 15% by placing group term life benefits in a captive, 2% to 10% by doing the same with medical stop-loss coverage and 10% to 15% by funding international benefits through a captive, according to the Towers Perrin information.

Mr. Lusk's analysis indicates that ADM's savings could reach the high end of Towers Perrin's estimates, he said.

ADM opted to begin its efforts to fund employee benefits through its 15-year-old captive, Agrinational Insurance Co., by focusing on group life benefits because that line appeared easier than others to explain to employees and the Labor Department.

Yet that communication process has its challenges. One thing ADM learned is that the Labor Department determines exactly what the employer will communicate to employees and within what time frame.

Employers have no input and should not attempt to explain to employees the situation in plain language, Mr. Lusk said. Stick with the regulatory language the Labor Department insists employees receive, he advised.

"We thought we would be able to put together a nice package that would explain it in layman's terms," he said. "No. It must be done the way the government wants it done."

In another innovative use for a captive, a luxury boat manufacturer has sold earnings protection policies to its dealers, explained Paul W. Smith, a vp at Gallagher Captive Services Inc. in Itasca, Ill.

The policies protect the dealers from the industry's boom-and-bust business cycles and require two triggers. The first trigger occurs when an individual dealer fails to sell a certain level of product. The second trigger occurs when boat sales fall for the entire industry.

Such programs permit the captive owner to put away money during good times, meet tax requirements for third-party business and earn additional income, Mr. Smith pointed out.

David G. DeCredico, senior manager in the Atlanta office for KPMG L.L.P., also participated in the panel discussion.

Domicile on pace to set captive record

POIPU, Hawaii—About 250 people registered for the Hawaii Captive Insurance Council's Biennial Forum, held Nov. 4-7 at the Hyatt Regency Kauai Resort and Spa in Poipu.

The meeting came amid news that the domicile is on track to set a record for annual captive growth.

There are now nearly 120 captives licensed in the state, said Craig Watanabe, captive insurance administrator for the State of Hawaii Insurance Division.

Hawaii has licensed 18 facilities so far this year. The previous record for the number of captives licensed in one year was 17. With other applications currently in the works, "we will break 120 by the end of the year," Mr. Watanabe predicted.

The date and location of HCIC's 2005 forum have not yet been set. For more information, visit the council's Web site at *www.hawaiicaptives.com*.

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Liability: Residual market proposal draw opposition

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Insurance Assn. Inc., which represents 75 insurers in the state.

"It is an affordability issue, not an availability issue," said Richard Stokes, northeast regional manager for the Alliance of American Insurers in Trenton, N.J. He said he is polling Alliance members on their experience writing coverage in New York.

But, builders' association representatives argue that there is an availability problem, too, for some companies in New York.

According to Philip LaRocque, executive vp of the Albany-based New York State Builders' Assn., liability insurance rates have increased "an average of 250% over two years" for his 3,500 members. Meanwhile, he said several member companies have experienced 500% increases and some can't get coverage at all.

Louis J. Coletti, president and chief executive officer of the Building Trades Employers' Assn. in New York, said a survey of his organization's 1,500 members found that rate increases ranged from 70% to more than 400%.

Conflicting story

Overall, "we are hearing quite a conflicting story" from insurers, agents and builders about whether liability coverage is available and affordable in the state, New York State Insurance Department Superintendent Gregory V. Serio said in an interview.

That was his conclusion after the hearing earlier this month in Albany. Three more hearings are scheduled around the state by year end.

"The department is holding public hearings to address concerns expressed by businesses and organizations that have requested information and assistance from the Insurance Department to secure appropriate insurance coverage vital to their operations in the current market environment," Mr. Serio explained in a statement.

While contractors' insurance coverage issues are a concern, "the primary focus" of the department's hearings is the availability and affordability of liability insurance for building owners and managers, he said in the interview.

Mr. Serio said he would decide by early next year whether he will require the New York Property Insurance Underwriting Assn. to provide some or all types of commercial liability insurance coverage.

NYPIUA is a joint underwriting association that acts as the market of last resort for New Yorkers unable to obtain from other markets fire and "extended property" coverage, which includes protection from windstorm, hail and riots. The entity was launched in the 1960s after riots and civil disorders made it difficult for property owners in urban areas to obtain coverage in the existing fire insurance market.

All admitted property/casualty insurers writing relevant lines of insurance in the state are required to participate in the pool, based on their market share in the previous year.

Insurance industry representatives say their concern about the proposal to expand the property insurance pool goes beyond the additional costs they would incur.

In a survey of 206 members, the Professional Insurance Agents of New York found that 63% said voluntary markets would withdraw from New York, and 43% say "residual market losses would soon become unsustainable," an association spokesman said at the hearing.

'We are hearing quite a conflicting story' from insurers, agents and builders about whether liability coverage is available and affordable.

Gregory V. Serio
New York State Insurance Department

In addition, such an expansion "will be perceived as a market barrier for those insurers who may want to expand their writings," said the Alliance's Mr. Stokes at the hearing. In addition, he said, it is a "stop gap solution" that does not address the serious issue of problems with the state's liability law.

As an alternative, the Alliance said it would not be opposed to the Insurance Department establishing a Market Assistance Program to help building owners and contractors find coverage. Such a program entails only voluntary insurer participation, Mr. Stokes noted, rather than the mandatory participation in the JUA.

Scaffold act

Following the hearing, Mr. Serio said he was concerned that several people had emphasized as the root cause of the liability market problem the state's Labor Law provisions 240 and 241—the nation's last remaining "scaffold act"—which hold employers strictly liable for any worker injured in an elevated position. This can range from falls from building scaffolds to stepladders.

Emphasizing the need to change those state law provisions "unfairly minimizes the scope of our review," Mr. Serio said.

Nevertheless, insurance industry and employer representative repeatedly cite those state law provisions as a fundamental problem for the New York market, because they increase employers' liability to workers' civil lawsuits and eliminate the exclusive remedy protection that the workers compensation system traditionally provides.

From the workers' perspective, though, those laws protect workers by making employers responsible for safe work sites, said Denis Hughes, president of the state's AFL-CIO. Bills in each chamber of the state Legislature that would introduce the concept of comparative negligence in any scaffolding injury claims would "weaken" an employer's responsibility, he said.

Meanwhile, Mr. Serio urged risk managers to participate in the remaining hearings so that he can obtain a better idea of commercial insurance buyers' view of the liability insurance marketplace.

The next hearing is scheduled for Nov. 20 in Hempstead, followed by Nov. 21 in New York City and Dec. 4 in Buffalo. The hearing record will remain open for 30 days after the final hearing.

For additional information about the hearings, call the Insurance Department at 212-480-5262, or visit *www.ins.state.ny.us/p0310281.htm.*

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Certusia: Nevis reinsurer seeks to enter U.S. market

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its capital consists of a disputed claim to 14,800 acres of pine forest in Fiji, financial statements and interviews show. Other assets include a "letter of guarantee" from a Mexican credit union that was shut down by Mexican federal regulators in 1999.

The financial statement also reports that Certusia "is currently completing registration and qualification" to operate in Bermuda. Bermuda government officials, however, say that the company is neither licensed as an insurer nor registered as a corporation in the domicile.

Efforts to reach Certusia principal Mel Derutledge by telephone were unsuccessful. Mr. Derutledge—whose title until last week was listed on Certusia's Web site as "International Rainmaker" but is now given as "Shareholder's Representative"—replied to an e-mailed query about Certusia but did not answer questions about its financial statement.

Calls to the company and one of its lawyers were returned by Nelson Cooper, who identified himself as a Certusia managing director. Mr. Cooper said the company's Sept. 30, 2003, financial statement obtained by *Business Insurance* was an "internal management report that should not have been released."

"I would not rely on it, and I would wait for further information," Mr. Cooper said, explaining that Certusia is restructuring its operations and arranging new capital to be included in a future financial statement.

"There are additional assets that they are bringing in. They are being recast," said Mr. Cooper, who declined to describe the new capital.

He referred several other questions about the Sept. 30 statement and Certusia's U.S. operations to Sills, Cummis, Radin, Tischman, Epstein & Gross, a Newark, N.J., law firm representing the company.

Stanley U. North III, a Sills Cummis partner, confirmed that he is acting as outside counsel to Certusia but declined to answer questions about the company, referring them to Certusia officials.

Mr. Cooper, meanwhile, affirmed the company's expansion plans: "Certusia is going to do what it takes to write business in the U.S. market. They have retained Sills Cummis in order to do that," he said.

Certusia was registered as a corporation in the Caribbean island of Nevis in 2002. It is not licensed in "any state to issue insurance policies," according to its Sept. 30 financial statement.

As of Friday, Certusia also had not applied to be included on the National Assn. of Insurance Commissioners' quarterly listing of alien insurers, confirmed Rob Essen, senior manager, global insurance markets, with the NAIC's International Insurers Department. Most states either require non-U.S. insurers to be listed or they allow that a listing fulfills their surplus lines eligibility requirements.

The company's Web site, *www.certusiagroup.com*, outlines a variety of credit and political risk products it offers, including "insolvency catastrophe insurance" protecting against uncollectible debts and "non-honoring of letter of credit insurance."

"The company's basic business is providing private guaranties to support the repayment of financial obligations," the site notes.

"We have a genuine interest with our policyholders in taking care of business, or as we say in France, l'assurance de savoir-faire," it says.

Certusia says it 'is currently completing registration and qualification' to operate in Bermuda, but that nation says the company is neither licensed as an insurer nor registered as a corporation in the domicile.

Until recently, the U.S. office addresses given for Certusia were an e-mail address and a mailbox at Mail Services Unlimited in West Palm Beach, Fla.

Last week, though, the company moved into rented space in a West Palm Beach-area office building and announced a major expansion into the U.S. surplus lines market.

In a press release, Certusia said that it has begun offering commercial general liability and excess liability coverages, along with surety and other bond products, on a nonadmitted basis. The company said it has formed Certusia USA Holdings Inc.—to be capitalized with $50 million in "investment grade securities" during the fourth quarter—and reported plans to acquire at least one U.S. domestic surety insurer by Dec. 31.

Certusia itself, the press release adds, plans to apply for a U.S. Treasury Department listing as a certified reinsurer of bonds covering federal government projects. As of Nov. 3, the Treasury Department list included only nine certified reinsurers, all large U.S.-licensed companies.

"We will be actively pursuing these acquisitions together with establishing the business in the United States and developing the other opportunities that we have underway," Certusia Chairman Chandran Mani said in a statement. Mr. Mani could not be reached for comment.

The press release said that Certusia would post its audited year-end 2002 balance sheet on its Web site later this month, followed by an audited income statement for 2002 and interim reports through Sept. 30, 2003.

Certusia's existing Sept. 30, 2003, balance sheet, however, raises more questions about the company's financial position than it answers.

The financial statement is marked "unaudited" and "for management purposes only" but its cover sheet bears the logo of KLA Chartered Accountants, a London auditing firm. Ashvin Shah, a partner with the firm—now known as KLAS—confirmed that he did audit work for Certusia "some time ago," but said he dropped it as a client and had no role in preparing the Sept. 30 statement.

The statement reports $163,888 in liabilities and $1.19 billion in assets. The assets include:

- 100% ownership of United Kingdom-based East/West Globale Equity Holdings Ltd., reportedly worth $568.8 million. East/West's sole asset, according to its own year-end 2002 financial statement, is pine forest acreage in Fiji. East/West also reported, though, that it is owned by a Fiji-based entity, Viti Pine Extension Trust, and the statement makes no mention of Certusia.

In an interview, Anare V. Matahau, corporate secretary and director of East/West, said the company had agreed to be acquired by Certusia in early 2002 in exchange for Certusia preferred stock, but that the deal fell apart before the end of last year. Viti Pine still owns East/West, he said.

In an e-mail, Certusia's Mr. Derutledge said the reinsurer's lawyers "are seeking a resolution to this and other issues" in preparation for Certusia's audited 2002 financial statement. He did not say why the asset continued to be reported in the Sept. 30, 2003, balance sheet.

- "Secured treasury facility notes" issued by Capital Alliance Bancorp Inc. and reportedly worth $593.8 million. Capital Alliance issued the notes in exchange for an assignment of promissory notes from Africa Trade Capital Equity Holdings Ltd., a company managed by Mr. Derutledge. The Africa Trade Capital assignment in turn is backed by promissory notes issued by "parastatal bodies and…guaranteed by a government of the Common Market of Eastern and Southern Africa," Certusia reports.

Certusia representatives declined to answer questions about the treasury facility notes. Capital Alliance Bancorp could not be located.

- A "letter of guarantee" issued by Union de Credito Metropolitana S.A. de C.V. of Mexico, reportedly worth $3 million.

The Mexican federal government moved in April 1999 to revoke Metropolitana's authority to act as a credit union, according to a Mexican government publication.

Asked about the government action, Certusia's Mr. Cooper said, "I heard something to that effect," but added that he believed there are still assets "outside" the credit union to back up the letter of guarantee.

Despite questions about its Sept. 30 balance sheet, Certusia said in its press release last week that "we are bringing our financial reporting statements in alignment with U.S. market expectations" as part of its move into the surplus lines and bonding markets.

"There is a major reorganization on the way," Mr. Cooper promised, repeatedly noting that lawyers at Sills Cummis are helping to ensure that Certusia complies with applicable laws.

Be that as it may, Mr. Derutledge is no stranger to controversial business dealings, court records show.

His name surfaced in a 2002 filing by federal prosecutors in the fraud trial of Edward M. Mezvinsky, a former U.S. representative from Iowa who began serving a nearly seven-year prison term in February for bilking multiple friends, business associates and banks of several million dollars. Mr. Mezvinsky served in Congress in the mid-1970s.

Mr. Mezvinsky owned a virtually worthless shell insurance company in the District of Columbia that he falsely told a number of banks was worth $2 million, according to a sentencing memorandum filed last year by federal prosecutors in Philadelphia.

To support his valuation, Mr. Mezvinsky produced letters in which two companies separately offered to buy the insurer for $1 million and $2.5 million in two sets of convoluted transactions. The letters—which prosecutors described as "fraudulent on their face"—were signed "Mel Derutledge," each in slightly different handwriting, according to the filing.

Robert A. Zausmer, an assistant U.S. attorney handling the case, said that the FBI made a cursory effort to find Mr. Derutledge—among other things by visiting the addresses his companies used—but never located him.

Mr. Derutledge was not charged with any crime in the Mezvinsky case.

Asked about the case, Certusia's Mr. Cooper confirmed that Mr. Derutledge was involved in proposed business deals with Mr. Mezvinsky but said that Mr. Derutledge was defrauded along with many other of Mr. Mezvinsky's victims.

"The proof of the pudding is in the eating. Mr. Mezvinsky is in federal custody now," Mr. Cooper said. "That's old history."

Parity: Backers push to pass legislation

Continued from page 3

skeptical whether they could back it.

"In light of current cost pressures, I don't think we would be amenable to it," said Neil Trautwein, director of employment policy at the National Assn. of Manufacturers in Washington.

Parity backers say some compromise may be necessary, but there is a limit to how much the original bill can be scaled back.

"I would be concerned if a compromise becomes the starting point of something that gets whittled down to nothing," said Ralph Ibson, vp-government affairs with the National Mental Health Assn. in Alexandria, Va.

Whether Congress will be more amenable to a scaled-back measure than to a total parity mandate is not known yet. Speaker of the House Dennis Hastert, R-Ill., for example, warned that adding health mandates might help to make health insurance coverage unaffordable.

"If you start putting mandates on top of those insurance policies, you may make it impossible for people to afford or (for) us to build some type of an insurance policy that is affordable for people," Rep. Hastert said.

"I want to see that coverage is extended. I also want to make sure it is affordable," he added.

Historically, notes Anthony Knettel, a vp with The ERISA Industry Committee in Washington, there has been more support for mental health care parity legislation in the Senate than the House.

Right now, Mr. Knettel said, the furthest the House leadership probably will go is a reauthorization of the 1996 law.

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Late News

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even greater rate hikes, ranging from 20% to 30%. But only 4% of large employers experienced the larger rate increases.

PMA selling finite renewals to Imagine Insurance

PMA Capital Corp. has agreed to sell the renewal rights to its reinsurance subsidiary's finite business to Imagine Insurance Co. Ltd. Imagine will have the opportunity to assume PMA Capital's in-force finite business, which the parent company valued at $333 million on Nov. 1, PMA said in a statement. The amount Imagine will pay for the business will be based on the amount of PMA business that it actually assumes.

Western Professional to quit hospital med mal

Western Professional Insurance Co. will stop writing medical malpractice coverage for hospitals and certain other medical facilities. The Seattle-based insurer currently provides coverage for 10 hospitals in Washington and five to 10 hospitals in Oregon and Montana, said Gary Morse, senior vp and general counsel for Western Professional. The insurer also will stop writing coverage for other medical facilities such as kidney centers and surgery centers. The losses associated with med mal business drove the decision to stop providing the coverage, Mr. Morse said.

Aspen to launch $200 million IPO

Aspen Insurance Holdings Ltd. plans to raise $200 million through an initial public offering. The Hamilton, Bermuda-based insurer and reinsurer filed a registration statement with the U.S. Securities and Exchange Commission for a share offering on the New York Stock Exchange. Aspen said in a statement that it would offer 9.5 million shares with an additional 1.4 million available to cover overallotments. The IPO price will likely be between $20 and $22, the statement said.

Maryland unveils health coverage plan

Maryland Health and Mental Hygiene Secretary Nelson Sabatini has unveiled a plan to reduce the number of Maryland residents lacking health insurance without requiring employers to provide coverage. The proposal would combine medical malpractice reforms with tax credits—and, in some cases, tax penalties—to encourage more of the estimated 690,000 state residents without health care coverage to get insurance. The proposal also calls for allowing employers of all sizes to offer a new basic benefit plan—without mandates—to employees.

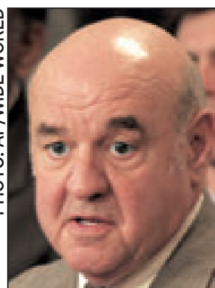


PHOTO: AP/WIDE WORLD

Mr. Sabatini

DOL proposes noncash pension contribution

U.S. Steel Corp. could contribute timber rights on two parcels of land it owns in lieu of cash to its pension plan, the Labor Department proposed. Under the transaction, U.S. Steel would contribute to its pension plan timber rights, which have been independently appraised at $60 million. The rights would give the U.S. Steel plan the right to grow, cut and harvest timber on about 170,000 acres of land near Birmingham, Ala., for a period of 99 years. Comments on the proposed exemption should be sent to the Labor Department by Dec. 18.

Allianz posts $491 million profit

Allianz A.G. Holding reported profits of 421 million euros ($490.5 million) for the first nine months of 2003, compared with a loss of 974 million euros ($962.2 million) in the comparable period last year. The

Munich, Germany-based insurer's prior-year results were dragged down by reserve increases at its Fireman's Fund Insurance Co. subsidiary in the United States. Allianz's net premiums earned for the period increased 2.2% to 41.4 billion euros ($48.23 billion).

BISYS continues expansion into P/C business

Continuing its expansion into the commercial property/casualty marketplace, BISYS Group Inc. is acquiring USA Insurance Group, a transportation managing general agency based in Melbourne, Fla. BISYS, a New York-based financial services outsourcing firm, made its initial venture into the P/C insurance industry with its March acquisition of wholesaler Tri-City Brokerage Inc. In a statement, John Hahn, president of Tri-City, said the USA Insurance acquisition creates significant cross-selling opportunities between the MGA and wholesaler.

Briefly noted

Irving, Texas-based **Exxon Mobil Corp.** plans to appeal an Alabama jury's verdict that it should pay $11.8 billion in punitive damages in addition to $63.5 million in compensatory damages to the state of Alabama in a case involving natural gas royalties. In response to Friday's verdict, Exxon Mobil denied engaging in fraud and noted that the U.S. Supreme Court held last year in *State Farm vs. Campbell* that punitive damage awards of more than nine times the underlying compensatory awards have a hard time passing constitutional muster....**XL America Inc.** has acquired the renewal rights of the architects, engineers and environmental consultants professional liability business of Royal & SunAlliance USA. John Glancy, who headed that business at RSA, will be joining XL. The RSA business represents about $160 million in gross premiums. XL currently writes about $50 million in gross premiums in those lines....The **Pension Benefit Guaranty Corp.** will guarantee a maximum annual benefit of $44,386.32 to participants in underfunded pension plans it takes over and terminates in 2004, up from this year's maximum of $43,977.24....Insurance entrepreneur **Sid Friedman**, who was one of the life insurance industry's top-selling producers, died last Thursday in Philadelphia. Mr. Friedman, 68, was a proponent of education and philanthropy who authored several books on insurance sales.

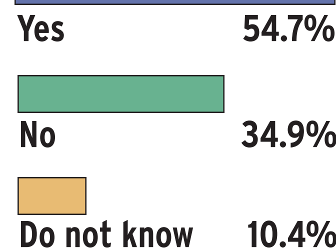
Check out BusinessInsurance.com

Items in the Late News column originally appeared in *BI*'s Daily News feature on *www.businessinsurance.com.* Visit the *BI* Web site to sign up to receive *BI*'s Daily News by e-mail.

Online Poll

[11/10-11/14]

Do you think that the federal terror insurance backstop will be extended beyond 2005?



Yes	54.7%
No	34.9%
Do not know	10.4%

BI Stock Index

[11/10 - 11/14]

Up-to-the-minute data for all 87 companies that comprise the *BI* Stock Index can be found at *www.businessinsurance.com.*

Percentage change of *BI* Stock Index vs. key indicators

BI Stock Index	2043.56	-0.09
Dow Jones	9768.68	-0.42
S&P 500	1050.35	-0.27

Largest gains

ESG Re Ltd.	33.33%
CNA Financial Corp.	26.21%
Vesta Insurance Co.	24.15%
Trenwick Group Ltd.	13.64%
XL Capital Ltd.	8.98%

Largest losses

SCPIE Holdings Inc.	-26.15%
Harleysville Group	-15.00%
Axis Capital Holdings Inc.	-4.43%
Allmerica Financial Corp.	-4.24%
Meadowbrook Ins. Group	-3.71%

Weekly change by market segment

Brokers	0.11%
Insurers/Reinsurers	0.81%
Managed Care Organizations	2.13%

Source: CNET Investor (investor.cnet.com)

Plans: Conferees approve ban on guidance

Continued from page 3
in Illinois ruled that IBM Corp.'s cash balance plan discriminated against older employees (*BI*, Aug. 4).

U.S. District Court Judge G. Patrick Murphy's ruling captured national attention, in part because the case involves one of the nation's largest and most well-known employers, but also because the ruling, if adopted by higher courts, would invalidate virtually all cash balance plans. The decision is on appeal.

Federal legislators quickly took notice of the ruling. The House adopted an amendment—proposed by longtime cash balance critic Rep. Bernard Sanders, I-Vt.—to the Treasury Department appropriations bill that bars the department from taking any action that would have the effect of overturning the IBM ruling. Sen. Harkin followed with his amendment, which the Senate accepted with virtually no debate.

Amid the House and Senate directives to hold off on cash balance plan rulemaking, Treasury agreed to do just that, with officials suggesting that it might need more guidance from Congress.

For now, the most immediate impact of the conferees' acceptance of the Harkin amendment is that employers can't expect cash balance plan guidance from federal regulators any time soon, at least concerning the legality of the plans.

> **'Employers are going to face another year of regulatory chaos and an intense exposure to litigation. It is impossible and intolerable.'**
>
> *Janice Gregory*
> *ERISA Industry Committee*

"Employers are going to face another year of regulatory chaos and an intense exposure to litigation. It is impossible and intolerable," said Janice Gregory, a vp with the ERISA Industry Committee, a lobbying group in Washington.

"They are perpetuating the time that employers are twisting in the wind," said Eric Lofgren, global director of benefits consulting in the Philadelphia office of Watson Wyatt Worldwide.

Some experts warn that the continuing regulatory uncertainty increases the likelihood that employers, including those with cash balance plans, will exit the defined benefit plan system.

"If you make it too difficult for employers to offer these plans, they will abandon them. They will not go back" to traditional plans, said Scott Macey, senior vp with Aon Consulting in Somerset, N.J.

Sen. Harkin, though, said he is not opposed to all cash balance plans. "Some plan designs can be very good, and we should allow those plans to move forward," he said.

Indeed, his amendment directs Treasury to provide a legislative proposal on one of the most contentious cash balance plan issues: the question of how older employees should be protected when their employers convert traditional plans to cash balance plans.

Such conversions can have a tremendous economic impact on older employees. As participants in traditional plans, they may be on the edge of earning the bulk of their benefits at the time of conversion. On the other hand, they may not be in the new cash balance plan long enough to earn much of a benefit.

Some employers have resolved this by giving all current plan participants the choice of staying in the old plan or opting into the cash balance plan. Others have given extra benefit credits to older employees moving to the cash balance plan.

But not all employers have been so generous, with some just extending the choice to employees within only a few years of retirement.

"Unfair conversions from traditional plan to cash balance plans are tantamount to age discrimination and must be stopped," Sen. Harkin said.

Aon's Mr. Macey said he hopes Treasury can develop fair and reasonable guidance. But if they don't, it will put "several nails in the defined benefit plan coffin."

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Broker: BB&T expands scope

Continued from page 1

13, with $137.0 million in brokerage revenues.

Executives from both companies say the deal is a good fit and allows the brokerages to achieve their common goal of expanding nationally.

"You're combining the eighth-largest insurance operation (based on U.S. business), with McGriff, which is the 13th. So, obviously, you're creating something special," said BB&T President Wade Reece. "But the beauty of the combination is that the two firms are really not strategically competitive as much as they are complementary."

BB&T is located in 11 mid-Atlantic and Southeastern states that fall within the footprint of its parent, Winston-Salem, N.C.-based bank BB&T Corp. In addition to focusing on middle-market and small accounts, BB&T derives about one-third of its revenues from its wholesale brokerage unit, CRC Insurance Services Inc., which it acquired in 2002. Birmingham, Ala.-based CRC was the nation's second-largest wholesaler in 2002, based on wholesale premium volume of $1.34 billion (*BI*, Sept. 8).

Mr. Reece said that the company, in determining its growth strategy, asked, "So, if you're BB&T, what's the logical extension?"

"You'd love to have a national retail franchise, but you'd want it to be very focused, and if it were complementary, it would be perfect. We found the premiere large-account broker in the country (that allows us) to build a national retail franchise that is focused on large accounts," he said. Through the combination of BB&T, McGriff and CRC, the company will be able "to bring great services to risk managers," he said.

Upon completion of the deal, which is expected to close in the first quarter of 2004, McGriff will operate as a wholly owned subsidiary of Branch Banking & Trust Co., a subsidiary of BB&T Corp., but will retain its name and management team. McGriff's wholesale subsidiary, Wood & Co., which has 75 employees and about $175 million in premiums, will be merged into CRC.

McGriff—which services its large commercial accounts out of four offices in Birmingham, Ala.; Atlanta; Dallas and Houston—specializes in energy and marine, construction, surety, employee benefits and public entity business, among other lines. It also operates Attenta, a workers compensation third-party administrator.

Bruce C. Dunbar Jr., chairman and chief executive officer of McGriff, said the deal is "a really good strategic move for both companies."

BB&T has "a network of middle-market agents inside their footprint where their emphasis has been on cross-selling and client relationships," he said. "What they see in McGriff is a vision to grow their fee-based income outside of their footprint in the large-account arena on a national basis."

"That was our vision for McGriff as well, but the issue of taking it to the next level requires a lot of capital," Mr. Dunbar said. "We're privately held, and our stock internal evaluation would not allow us to go out and pay a price for a retail agency based on what they sell for these days without being tremendously diluting to earnings for the shareholders," he said. "Whereas we have the horsepower and the vision, we really needed the capital tools to take the business to the next level."

Under terms of the transaction, BB&T Corp. will pay $50 million in cash and $304 million in stock based on its closing share price of $38.84 on Nov. 10. BB&T Corp. will issue between 7.83 million and 8.65 million shares based on the company's average closing price during a pricing period prior to closing. In addition, the deal allows for a total "earnout" payment to McGriff shareholders of approximately $102 million in cash over a five-year period if the brokerage exceeds certain performance targets.

Observers have only positive reactions to the deal.

"McGriff is, without question, one of the finest regional brokers in the country, with a strong capability in the energy and inland marine area," said John Wicher of San Francisco-based insurance investment bank John Wicher & Associates. "BB&T has demonstrated its ability and willingness to be bold in the acquisitions it has made, and, as a result of that…companies like McGriff will remain outside the national broker's family," he said. "In other words, it's not going to be part of Aon (Corp.)."

"Clearly, McGriff provides an opportunity for BB&T to be a much more significant player in the large-account arena," said Bobby Reagan, president and CEO of Reagan Consulting Inc., which represented McGriff in the deal. "McGriff is going to provide the platform in which BB&T intends to expand and build a national insurance operation outside of their footprint."

The deal is "going to be great for the customers," Mr. Reagan predicted. The additional resources from a $90 billion financial institution that knows how to run an insurance operation both as a retailer and as a wholesaler and that has a commitment to grow and expand its insurance operation "is pretty exciting to the customers," Mr. Reagan said.

Rob Lieblein, managing principal and president of WFG Capital Advisors in Harrisburg, Pa., said he thinks the deal will put more competitive pressure on smaller insurance agencies that do not have the same power and efficiency as larger agencies such as BB&T.

"I think it's good for the industry," Mr. Lieblein said. "It's going to keep everybody focused on being good performers and on gaining efficiencies and being able to candidly look at how to continue to improve the value of their agencies in order to compete with the large mega-agencies that are out there right now."

SNAPSHOT

Based on 2002 figures

BB&T Insurance Services, Inc.	
Brokerage revenues	$354.5 million
Retail offices	72
Employees	1,904
McGriff, Seibels & Williams Inc.	
Brokerage revenues	$137.0 million
Retail offices	4
Employees	734
Combined:	
Brokerage revenues	$491.5 million
Retail offices	76
Employees	2,638

Source: *BI* Surveys

PBGC: Controversial proposal

Continued from page 1

valued—that would benefit all employers, not just those with underfunded plans.

The controversy first erupted in September, when the Senate Finance Committee—following the lead of the House of Representatives—passed a sweeping measure that would discard the 30-year Treasury bond in favor of long-term corporate bonds as the debt instrument used by employers to value their pension obligations.

That change has been long sought by employers, who say the low yield on the T-bond has inflated pension liabilities, making even healthy plans appear underfunded for reporting purposes and resulting in employers having to make billions of dollars in contributions to the plans that they say are not necessary.

The switch to a corporate bond index to value pension liabilities—at least on an interim basis—enjoys broad support in Congress and has, until recently, been considered a near shoo-in for enactment. The move could cut employers' pension costs by more than $25 billion over two years.

That proposal was passed on a near unanimous vote by the House and on voice votes with no apparent opposition by the Senate Finance and Health, Education, Labor and Pensions Committees. But now it has become shrouded in controversy because of a provision sought by employers with severely underfunded plans who want funding relief beyond that provided by the interest rate change.

In a provision that was tacked on without debate to the Finance Committee bill, affected employers would save an additional $30 billion in pension contributions over the next three years that they otherwise would be required to make up under current legislation.

It would do so by exempting employers from the acceleration of contributions that are required when a plan slips below a certain funding level, generally 90%. Triggering the so-called deficit reduction contribution—or DRC—means liabilities have to be paid off within three to seven years rather than the normal 30 years.

Under the Finance Committee bill, employers whose pension plans were at least 90% funded in 2000, or employers whose pension plans were at least 80% funded in 2000 and at least 90% funded in 1999 and 1998, would be exempt from the DRC for 2004, 2005 and 2006, regardless of how much their pensions plans are underfunded in any one of those three years.

"We have seen many companies, who in the absence of the DRC, have quite manageable contributions," said Sheldon Gamzon, a principal with the HR Services unit of PricewaterhouseCoopers L.L.P. in New York. But when the DRC is triggered, contributions can be five or even 10 times higher than before, he said.

The insertion of the DRC waiver provision has led to increasingly heated exchanges between the Bush administration and congressional leaders.

Last week Steve Kandarian, executive director of the PBGC, the federal agency that guarantees basic benefits through premiums paid by employers with defined benefit plans, described the DRC waiver as a "dangerous gamble."

Underfunded plans, he said, will become even more so and if those plans are later terminated, "workers will lose benefits and the pension insurance program will suffer additional multibillion dollar deficits."

Ultimately, as the benefit obligations of the PBGC increase, the PBGC will need higher premiums for employers, he said. As of Aug. 31 the PBGC had a $8.8 billion deficit.

"If companies do not pay for their benefit obligations, someone else must. In this case, other employers would face higher costs supporting the PBGC despite having adequately funded their own plans," Mr. Kandarian said.

Mr. Kandarian's comments, in turn, triggered an angry response from Finance Committee Chairman Charles Grassley, R-Iowa, who will play a pivotal role in trying to hammer out an agreement on the legislation.

Sen. Grassley said Mr. Kandarian should look at the entire Finance Committee pension package, and not focus "solely on what he perceives as a defect."

The DRC provision, Sen. Grassley said, along with several other short-term relief provisions "were the legislative glue that brought together the larger proposal." Such long-term provisions include, after a transitional period, valuing liabilities through a yield curve in which the closer a pension plan participant is to retirement age, the lower the interest rate that would be used to value the liability.

The growing controversy over the DRC has heightened the fears of some employer groups that Congress could become sidetracked from what they say should be the top pension priority: replacing the Treasury bond yields with those of long term corporate bonds to value pension liabilities.

"With each passing day, we get a little more nervous," said Janice Gregory, a vp with the ERISA Industry Committee in Washington.

Ms. Gregory says any provision, including the DRC, should be jettisoned, if its inclusion threatens the passage of the interest rate methodology change.

"The focus should be on the interest rate," she said.

The DRC exemption is controversial in the private sector as well with opinions divided on whether it will hurt or help the nation's pension system.

"The plans are going to be in even worst shape. What we are talking about is a get out of jail free card. It will mean bigger deficits for the PBGC and the good guys will pay," said a pension actuary at a large consulting firm who asked not to be identified.

Richard Ippolito, a professor at George Mason University School of Law in Arlington, Va., and a former chief economist for the PBGC, said legislators are trying to protect the interests of their constituents—in this case large employers with underfunded plans—but in the end it will be the public that will pay.

If many of the plans that obtained the DRC exemption ultimately fail, Congress may have to bail them out as the cost could be beyond the resources of the PBGC, he said.

Mr. Ippolito said providing funding relief is no assurance that the plans ultimately won't fail. "Not everyone will terminate, but those that do will be even more underfunded," he said.

Chris Bone, chief actuary with Aon Consulting in Somerset, N.J., says if funding relief is provided, it should be more targeted. "It is not good policy to have such a blanket exemption."

But others say a DRC waiver would be good for the nation's pension system in that it would give employers a breathing space. In that time, some say, pension assets could increase, if the equities markets continue to rise, while interest rates also might rise, reducing the value of liabilities.

By providing a respite from big pension obligations, employers will be less likely, some say, to take drastic actions such as freezing benefit accruals or even terminating their plans.

"By providing temporary relief, Congress increases the likelihood that these plans will continue in the long term," said James Klein, president of the American Benefits Council in Washington.

"We just need something to get over the hump," said Michael Pikelny, benefits consultant and corporate actuary at apparel manufacturer Hartmarx Corp. in Chicago. In the absence of a legislative change, Hartmarx will become subject to the DRC in 2005.